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LOCAL GOVERNMENT
IN MODERN ENGLAND

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LOCAL GOVERNMENT IN MODERN ENGLAND

By

JOHN P. R. MAUD

Fellow of University College, Oxford
Member of the Oxford City Council



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TO
My Father,
JOHN KENSINGTON
June 13, 1860—March 21, 1932

PREFACE

FIRST, I must thank those from whom I have learnt the little that I know about English local government. The elected members and officials of the Oxford City Council ; Town Clerks of the cities and Clerks of the counties which I have visited in the course of the last three years ; Sir Arthur Robinson, of the Ministry of Health ; all the other people engaged in local government whose time I have wasted ; and in particular Mrs. H. A. L. Fisher, Mr. G. D. H. Cole, Mr. Douglas Veale, Mr. A. H. Campbell, Mr. A. C. Cameron and my wife ; for without their help this book would have been even less adequate than it is.

Secondly, I would suggest that local government is something from which every inhabitant of almost every country in the world either suffers or benefits. And since one of the purposes of this book is to explain the relevance of local government, so that in future the blessings and curses of the reader may be more intelligent, I would like to borrow from Bunyan's introduction to the *Pilgrim's Progress* :

Wouldst read thy self, and read thou knowst not what
And yet know whether thou art blest or not,
By reading the same lines ? O then come hither,
And lay my Book, thy Head, and Heart together.

J. P. R. M.

OXFORD,
June, 1932.

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LOCAL GOVERNMENT IN MODERN ENGLAND

CHAPTER I

INTRODUCTION

BEFORE starting to discuss local government, it is necessary to consider what is meant by government ; and this question is so difficult to answer clearly in a few words, that it seems best to introduce the subject by inventing a myth.

Imagine an island, and on the island a garden. The master of the island has made a plan; determining the boundaries of the garden, the things which are to grow there, and the ways in which cultivation is to proceed. But he is not lord of the harvest : he can read the signs of the times with some degree of accuracy, and he knows something about the condition of the soil and the depth of the wells ; but he cannot control the rain or the sunshine, and often he is forced to alter his plans : in time of drought, for instance, the herbaceous borders have to be neglected in favour of the kitchen garden. As a rule, the master does not work in the garden himself : being only an enthusiastic amateur, he leaves the execution of the plan to various experts ; but he supplies them with the materials that they need, and criticizes them when they displease him. These experts are of roughly

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three kinds : the head-gardeners have a wide discretion and can sometimes even persuade the master to modify provisions of the plan, but they are liable to dismissal without notice ; the other gardeners are supposed to be in a subordinate position, but their services are retained for so much longer periods and their knowledge of gardening is therefore so much more extensive, that in fact they are often more influential than the head-gardeners ; thirdly, there is a hierarchy of superintendents, who have to see that the plan is strictly observed in all its details as the work proceeds. If any question arises—whether, say, the growth of a particular plant is in accordance with the provisions of the plan—a superintendent must decide ; and there are strong men whose work it is to uproot any plant which is declared by the superintendent to be a weed. The master often decides, when some offending plant has been dug up, that after all he has no objection to it ; but until the definition of a weed has been altered the superintendent's decision is final.

The master of the island has a large family ; and the plan accordingly provides that each of the children should be responsible for a particular part of the garden. These allotments are near the edge of the garden, and their boundaries are carefully defined ; but there is a fringe of country outside the boundary of the garden altogether, which the children may take in and include within their plots. They are told to plant certain things, and allowed to plant others ; but they must obtain special leave from their father before growing anything else. There is a well in each allotment from which they can draw what water they need ; but the well-heads are narrow, and when water is

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scarce, part of the children's supply is probably commandeered by the father. But as the plan of the garden can only be carried out if the children's allotments produce what is expected of them, the father has devised an artificial pool in the middle of the garden; from this he gives each of the children, according to their need and also according to the results they can show, a further supply of water. One or two of the gardeners are specially commissioned to look after the children, and the superintendent has as much right to decide questions arising in the allotments as in other parts of the garden.

The parable is not difficult to interpret, and its meaning will become more evident as the book proceeds. The island is the life of all the men and women who constitute the English nation. The garden is that part of their lives which is affected by the state. Keeping the peace, providing a system of justice, defending the country from external attack, are among the most ancient functions of the state, but the provision of certain services (in the fields of public health, education, highways and so on) has now been added to its work; and from certain parts of life (religious exercises, for instance), which at one time came within its view, it has deliberately retired. The boundaries of the garden, that is to say, are always changing. The master of the island is Parliament, and his plan is the law of the constitution.

The allegory of the island, the master and the plan, could be applied to any civilized country: in the United States of America, for instance, the plan is a written constitution, and the master may be said to have died at the end of the eighteenth century; the original plan has been modified in

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various ways since then, but the dead hand of the master can still be felt. In Great Britain, on the other hand, constitutional law is indistinguishable, except in subject-matter, from the rest of the law, and can be altered by Parliament with no less ease. The master, then, is still alive, and his plan is found not in any separate constitutional code, but scattered in various parts of the ordinary law. This law, now as in the past, is the creation not only of Parliament, but also of the judges: but, as Parliament (or, rather, the Crown in Parliament) has supreme power to alter it as it likes, overriding, if it so desires, judge-made rules, it is Parliament (or the Crown in Parliament) that can be regarded as the master of the island. What services shall be provided by state activity, the administrative organization needed for their provision, and the money which must be spent in the process—all this is prescribed from time to time by parliamentary legislation, and no detail of the plan can be disregarded with impunity by any public authority or private person.

The superintendents represent the judiciary: that organ of the state which has the special function of interpreting the law when particular doubts arise, and compelling obedience. The head-gardeners are the cabinet ministers and other members of the government: their term of office depends on the sovereign's pleasure, but while it lasts they are more or less free from direct interference. The other gardeners are the permanent civil servants, who fill the central departments of State (the Treasury, the Ministry of Health, etc.), and work under the direction of ministers, though they are employed and paid by the sovereign.

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The children are the local authorities: the councils of boroughs, counties, and so on. They too form part of the administrative organization, but they stand in a relation to the sovereign which differs fundamentally from that in which either the cabinet or the civil servant stands. The father can increase his family or disinherit some member of it, but he can very much more easily appoint or dismiss a servant. So the sovereign can create a new type of local authority (there were no county councils before 1888), or abolish an existing type (the old type of borough council was abolished in 1835); but those acts are different in kind from the creation of a new Minister or Department.¹ For the local authorities are the same flesh and blood as the sovereign: each council is elected (either directly or indirectly) by the people of an area, and it is answerable to that local electorate, just as the sovereign is ultimately responsible to the national electorate.

The plots of garden which the children cultivate together constitute the sphere of local government. By Public General Acts² of Parliament, the sovereign has told the local authorities to provide certain services; by these same acts and others, called Adoptive Acts,³ it has said that other services may be provided; further, by Local Acts of Parliament or Provisional Orders⁴ certain borough councils (and other local authorities) have

¹ For instance, the Ministry of Transport was created in 1920.

² In 1875, 1888, 1929, for instance.

³ *E.g.* Baths and Wash-houses Acts, 1846-1899; Libraries Acts, 1892-1919; Small Holdings and Allotments Acts, 1908-1925, etc.

⁴ See G. F. M. Campion, *Procedure of the House of Commons*, ch. ix.

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obtained privileges from the sovereign, allowing them to provide yet other services.¹ Moreover, each local authority is allowed to levy a local tax (called a rate) on the occupiers of houses and other premises in the area : a well which may run dry, and which Parliament may at any time stop up.² Further, as the children draw water from the pool in the centre of the garden, so the local authorities are allowed a share of the national revenue.

The allotments are the only part of the myth with which this book is directly concerned. What are the children compelled and what are they allowed to grow? That is the subject of the next chapter : a general survey of the services which the councils of boroughs, counties, and so on, must, and those which they may, provide. What is the size of each plot, and the relation between one child and another? The third chapter deals with the areas of local government and the functions of various local authorities. And though Parliament is one parent of a local authority, the local electorate is another ; so the fourth chapter considers the relation of a local council to the people living in the area which it serves, particularly to those of the inhabitants who bring it to life each time there is an election.

In the next three chapters some ways in which the sons actually deal with their gardens are discussed : how they make use of their own children, how they appoint their own expert gardeners, and how they get water from their own springs and

¹ Compare Birmingham's bank, Doncaster's race-course, etc.

² This was partially effected by " de-rating " provisions of the Local Government Act, 1929.

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from the pond in the middle of their father's garden. The committee-system (that is to say), the paid officials and finance are discussed in Chapters V, VI and VII.

In the myth it was said that some of the gardeners employed by the master of the garden had work to do in the children's allotments. Certain ministers of the Crown (such as the Minister of Health) are given powers and duties by Parliament which bring them into relation with the local authorities. Many of these ministers are also allowed to appoint "such officers as they think fit"; and in fact each of them has under him a department of the central government (the Ministry of Health, for instance), consisting of full-time permanent civil servants, who are in theory supposed to carry out the minister's intentions. The eighth chapter is concerned with these central authorities, and the ways in which they co-operate in the work of local government.

Both children and gardeners have to work within the framework of the master's plan: it is the superintendent who must declare the meaning of the plan in case of doubt, and secure its observance. Chapter IX, then, considers how the courts co-operate in local government, intervening at the suggestion either of the citizens or the central or local authorities, and using the unlimited force which is at their disposal to secure that nothing be left undone which the law commands nor anything done which the law does not allow.

In the tenth chapter some of these features of local government are examined historically; and in Chapter XI the services are finally considered from the point of view of the consumer, who must enjoy or suffer from them.

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A provisional answer can now be given to the question which the myth was intended to illustrate. The citizens of modern England are organized as a national state, and there are three characteristics of that organization. Its purposes are determined through representative institutions, which are intended to give every citizen an opportunity of expressing his will; the achievement of those purposes is attempted partly through representative institutions, and partly by other means; and everyone living in the country is compelled to obey the state's command.

But the citizens are also organized as local states, and this organization has three outstanding features too. First, it is only allowed to exist for purposes specified by the national state; secondly, within its own jurisdiction, each local state resembles the national state, in having a representative institution, executive machinery and the power of issuing commands which the local inhabitants must obey; and thirdly, it is used for certain purposes as an agent of the national state. No clear line can be drawn between the services which it provides as an agent and those which it provides as a local state, for central and local government are not rigidly separated; but the power of a local authority to raise money, and its relation to the electorate, distinguish it fundamentally from authorities which are *mere* agents of the centre, such as managers of employment exchanges, inland revenue officers and the courts of justice.

Finally, the greater part of each citizen's life is outside the sphere of the state: indeed, much of it may be outside the territorial boundaries of the nation. Men and women have organized themselves for an endless variety of purposes: religion,

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art, industry, trade, amusement, and so on; and many of these organizations resemble the state in making use of some representative machinery ; but none of them (at least in theory) can compel a man who has not voluntarily become a member to obey its commands. These voluntary organizations and private lives are the environment of the national state corresponding to that part of the island which surrounds the garden and may at any moment, if the master of the island so chooses, be brought within the boundaries of the garden ; and the national state is the setting of local government.

CHAPTER II

THE SERVICES PROVIDED

LOCAL government in modern England is the creation of Parliament. There were local governors of a sort long before Parliament came into being ; but the organs of local government as they exist in the twentieth century take all their important characteristics from various Acts of Parliament. These local governors have no general powers of government ; for Parliament has not been content to set them bounds which they may not pass, but has positively prescribed what they may do in certain directions and must do in others. They are allowed by Parliament to provide certain services ; they are commanded to provide others ; and practically nothing else which costs money can they do.

English local government in fact is concerned with certain services which may or must be provided, and which are distinguished from those provided by the national state in at least two important respects : first, the people for whom they are specially provided are the men, women and children living within certain definite areas ; and secondly, the provision is made through the activity of local councils, mainly consisting of persons living in the place. But since Parliament has defined the areas and laid down rules to determine the constitution of the local councils, as well as fixing their powers and duties, local government, if by that is meant

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the provision of services to a local community through a representative assembly, can properly be described as the creation of Parliament.

A description of modern English local government must begin with a list of services. Such a list might be made by putting together the relevant parts of a great number of Parliamentary statutes which have become law at various dates in the course of the last hundred years. But an historical calendar of that kind would not be worth recording here, and an alphabetical catalogue of the powers and duties of each local authority in turn would be little better. Some more or less arbitrary form of classification must be adopted.

Protection, Welfare and Convenience are three labels which may serve. By Protection is chiefly meant the service rendered by policemen. This service is mentioned first because it is the oldest form of service provided by government, and because keeping the peace will always be an arduous and necessary function of the powers that be. But although the policeman may still popularly be supposed to typify the state, his function is far from being the most typical of the local government services; moreover its nature has undergone a subtle change in recent times. The protection of the public used, in the eyes of many people at least, to be little more than the prevention of the "lower classes" from interfering with the owners of property. But as laws and by-laws (concerned with health, education, and so on) multiply, and life becomes increasingly regulated, the field of police-activity is proportionately widened, and a large part of the community finds itself in contact with an arm of the law. This change discourages the belief that the police are

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on the side of the propertied classes. Indeed, since the coming of the motor-car, the police have become special protectors of the pedestrian class against the ravages of one kind of property-owner.¹ The positive function of traffic-control, which has also arisen from this circumstance, is another instance of the change. The policeman has ceased to be merely an instrument of prevention ; many of his duties are positive, and have more to do with Welfare than with Protection.

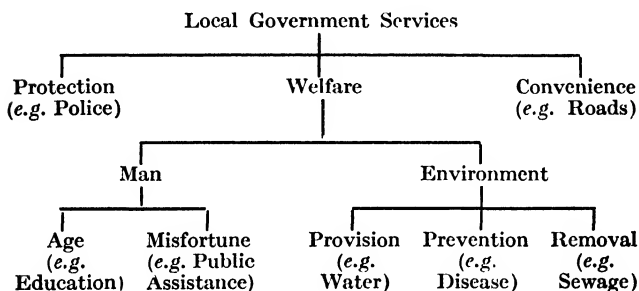
Under the label of Welfare fall so many different services that some further classification is needed within the group. There are services concerned directly with the welfare of man himself ; and there are others concerned primarily with his environment. For the first of these two kinds of service, man is treated according either to his age or his misfortune. Under the second head, there are three ways of bettering his environment : by providing certain of the bare necessities of life ; by preventing unpleasantness ; and if unpleasantness must needs come, by removing it. These Welfare services therefore are first classified according to their concern for man or for his environment. Then one class is cut in two, and men are grouped either according to their age or their misfortune ; and the second class is divided in three, since a man's environment may be modified by services of Provision, Prevention, or Removal.

The label of Convenience covers another multi-

¹ But observe their comparative failure, as shown by the number of persons killed on the highway every year. In 1930 there were 156,793 accidents on the road (an increase of $3\frac{1}{2}\%$ since 1929), resulting in 7,805 deaths and 177,895 injuries (an increase of $4\frac{1}{2}\%$ on those killed or injured in 1929).

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tude of miscellaneous services, many of which might well be taken to fall within the Welfare group. But they are distinguished by a separate label because they have to do with the provision of services which are of less evident necessity to the good life of the citizen than those grouped under the previous head. This classification, then, may be expressed graphically as follows :



First, then, we must consider the group of services rendered to man according to his age. Man does not have to wait till he has been born to find himself member of an age-group in which the local governors may be interested. At the end of 1930 there were over a thousand ante-natal clinics in England (of which some two hundred were provided and maintained by voluntary associations). In some towns it appears that 50% of the mothers who had babies in that year attended a clinic before the baby was born. In others the percentage was as low as 20 ; and for the rural parts of the country there seems at present to be little chance of providing a clinical service. But the "health-visitors" do something to fill in these gaps : their work for maternity and child-welfare

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in 1930 was equivalent to the activity of nearly 2,000 full-time workers, and the equivalent of a further 500 health-visitors was provided through voluntary associations.¹

While the child is actually being born, the interest of the local authority is direct only on the rare occasion when the mother has been taken into a municipal maternity home. Some 7,000 beds were available at the end of 1930 for this purpose, and over 2,000 of these were provided by voluntary effort. Though midwifery is not a local government service (for the registered midwives, who attended over 60% of the births occurring in 1930, are neither registered nor paid by the local authorities, but only supervised by them), yet the health-visitors and nurses already mentioned are also active at the time of a child's birth; local authorities can also supply mothers with milk, either free or at cost price, and with certain other kinds of assistance.

If the mother or father of the child is insured under the National Health Insurance Acts—and everyone employed in almost any branch of trade or industry, who does not earn more than £156 a year, is compulsorily insured in this way²—the mother can draw maternity benefit at such a time; but this she does not receive as part of a local government service, though the local authority has something to do with the provision of it.

¹ There were also 2,000 nurses working among expectant mothers and young children, but only a very few of these nurses were employed directly by local authorities.

² Over 14 million men and women in England were covered by this insurance in December, 1930. That is to say, between a quarter and a third of the population, which amounted to nearly 40 million according to the 1931 census.

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From two other points of view the local authority must take notice of the age-group of the new-born baby. All births must be registered (quite apart from the immediate notification which must be given within forty-eight hours; but this duty is imposed on the local authority for the benefit of the community as a whole (and in particular the statistician) rather than for the baby's benefit. More properly considered a service from the consumer's point of view is vaccination against small-pox. This *must* be administered, unless the father or mother expresses conscientious scruple—which happened in forty-five cases out of a hundred during 1929.

Once the baby has been born, he probably remains in the same age-group for five years. For the first three of these, he is under the intermittent care of the same health-visitors and nurses who assisted before his birth and on the occasion of it.¹ This care will be most evident if the child shows signs of "measles, whooping-cough, gastro-enteritis, poliomyelitis or ophthalmia neonatorum": in other words, if it joins a misfortune-group. But even should it escape misfortune, it may be taken for periodical weighing and examination to a child-welfare clinic, directly or indirectly connected with the local authority, if the mother lives in a town or village which provides this service. Between the ages of 2 and 5 it may be sent to a nursery school, under the same ægis, for certain hours of the day, but except in one or two large cities, it will not have this opportunity.

At 5 years old (or, if its parent so chooses, at the age of 3), it becomes a member of another group,

¹ In 1930, over 3½ million visits were paid by health-visitors to children between the ages of 1 and 5.

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and in this it must remain at least until it is 14 years old. This is the stage of elementary education. It is of course possible for the child to be educated privately: if so, probably no questions are asked, and the local authority takes no further notice, unless the private school is notoriously inefficient. But for children whose parents cannot afford a private school, education must not only be made available: if necessary, it must be forcibly administered, either in schools provided and maintained by the local authority, or in those which are maintained by the local authority but provided (and in some respects controlled) by church organizations. The recalcitrant parents must be made to send their boy or girl to school, and if fines or threats of fines have no effect, the child must be taken away from its home and sent to an "industrial" school. Of course no parent may on any account be allowed to pay the local authority for this educational service.¹

The compulsory process may continue till he is 14, and may continue till it is 15 if the local authority has passed a by-law to that effect²; and, though there is no compulsion after that, education, but not necessarily or wholly free education, is available for several years more. When the child is 11 or 12 years old, he is probably made to sit for an examination, as a result of which he may be offered a scholarship or a "free place" at another kind of school. This may be a Central school,³ where the child will probably stay till he is 16 and be given

¹ The cost of elementary education in 1929 was about £63 million.

² In 1931 five local authorities had made by-laws extending the compulsory limit to 15 years of age.

³ Central schools are part of the "elementary" system.

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an education which perhaps includes some commercial or industrial training; or it may be a Secondary or High School, where he will certainly stay till he is 16, and perhaps for another year or two, if he shows promise of academic distinction. After the age at which education ceases to be compulsory, the child will have to pay the full fees, unless he is awarded a scholarship or free place. In 1930, it was reckoned that the fees charged for children over 12 years of age were commonly between nine and twelve guineas a year. But of the 394,000 pupils that year in schools of the Secondary kind (which does not include Central schools), over 178,000 had been awarded free places, or a similar exemption. Besides, the parent of any such child could always apply for additional help in the form of a maintenance grant.

School-children are given very much more than mere intellectual training. A school medical service is gradually being built up and in some respects can already be called complete. Every child who goes to an elementary school is medically examined at least three times, at the ages of 5, 8 and 12: in 1929 there were also 14 million "cleanliness examinations," 5% of which were successful in detecting the unclean. More important still, perhaps, are the special examinations of teeth, eyes, ears and throat which most children are made to undergo. The local authority does not necessarily take any action to cure the defects it finds on such occasions, but it always suggests to the parent what course should be followed, and very often it takes the initiative itself. For instance, though only one-half of all the children at elementary schools had their teeth examined in 1929, and

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nearly 70% of these were found to require treatment, over a million children—about 50% of those inspected—were actually treated.

Physical training too is part of the ordinary curriculum of these schools; and play-centres, provided sometimes by local authorities, sometimes by voluntary bodies, give children the opportunity in many places of enjoying themselves after school-hours and during holidays “under adequate supervision,” as the Board of Education grimly remarks.

Another important service provided occasionally to children in this age-group is food. Local authorities have the power, though they need not exercise it, of giving school-children breakfast, dinner, tea or any “other meal” during term-time and also in the holidays. But before a child can be fed in this way, he must be certified as under-nourished, and the parents must pay unless they can prove their inability to do so.¹

At the age of 14 most children leave the age-group which they entered when they were 5; others, who can afford to stay longer at school, do not leave the group before the age of 16, 17 or 18; but some continue their education, at the University if that is financially possible² (there is a small but increasing number of scholarships offered by the state, the local authority and other bodies), or at a College of Art or Technical College, where full-time or part-time courses can be

¹ Over 265,000 children were fed in this way during 1929, at nearly 33 million meals.

² Of 66,741 pupils who left grant-aided secondary schools in 1929–30, 2,477 boys and 1,352 girls are known to have proceeded direct to Universities. Sixty-four per cent. of these had come originally from public elementary schools.

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attended. Adult education continues to be made available for them, whatever their ages may be.

On the other hand, if a child leaves school at 14, as soon as his free education is over, he enters an age-group for which no provision is made by any local or other public authority. When he becomes 16, if he finds employment in some branch of trade or industry which falls within the scope of the National Insurance Scheme, he enters again into an age-group in which the State, though not the local authority, is interested, and henceforth he can draw sickness, medical and other benefits (including maternity benefit when his wife bears him a child, as was mentioned before) until, at the age of 65, he may find himself qualified for a pension. That again is no direct concern of the local authority; for pensions, like Insurance Benefit, are administered by local agents of the central government, not by the local authorities.

No more can be said at present of the local government service with which a man finds himself provided on account of his age. The second form of service is concerned with his misfortunes. There are, broadly speaking, two kinds of misfortune which qualify a man for this type of assistance: disease and destitution. We noticed that from some months before birth up to the time when he leaves school the child may be continuously under the care of the local authority, or of some voluntary association allied to it: simply by reason of his age official notice is taken of him, whether he suffers from disease or not. But once he has left school, this general supervision ceases. The local authority henceforth shows comparatively little interest in him so long as he is healthy, and no great concern even when he falls ill, unless his

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malady is infectious. In other words he does not find himself in a misfortune-group for which the local authority provides, unless his misfortune is of a certain kind. It is true that the law permits local authorities to provide general hospitals for the accommodation of all sorts and conditions of sufferer, but this power has not been exercised extensively.¹ Local government is still mainly occupied with certain types of suffering rather than with health or disease in general.

Infectious diseases are "notifiable." If a man catches one of these, the doctor who attends him must let the local authority know, and the local authority must take action, primarily to prevent him from infecting other people, but also in the hope of curing him. Scarlet fever, diphtheria, pneumonia, whooping-cough and smallpox may serve as examples of this type of disease. If he becomes tuberculous, or suffers from venereal disease, the local authority takes a still keener interest in him. It does not necessarily undertake entire responsibility for him; but it keeps in touch with the hospitals, private practitioners² and voluntary bodies; and it must fill in the gaps, building if necessary isolation hospitals, tuberculosis settlements and the like. As an instance of the effort to secure co-operation between voluntary and public effort in this direction, a section of the Local Government Act, 1929, is worth quoting. When making provision for hospital accommodation in discharge of the functions transferred to them by the Act, local authorities are required to "consult such committee

¹ The work of the Metropolitan Asylums Board is an obvious exception.

² But not in the case of venereal disease.

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or other body as they consider to represent both the governing bodies and the medical and surgical staffs of the voluntary hospitals providing services in or for the benefit of the County or County Borough."

Another group of sufferers for whom the local authority must provide is the blind. It can if it likes make provision for bringing up to a definite sum the weekly income of each "unemployable" blind person in the area ; and it can give assistance or educational training to the blind in their homes, even if they are not unemployable. Here again there is close co-operation between local authority and voluntary association¹ ; grants are regularly given ; and sometimes a group of local authorities will appoint a "regional supervisor," whose duty it is to inspect the work of voluntary associations and make reports to the local authorities concerned.

Lunatics form another group of this kind, and the mentally defective yet another. The Mental Treatment Act of 1930 makes possible a great advance in the provision by local authorities of preventive treatment in cases of incipient mental illness, especially by enabling general hospitals (municipal and voluntary) to participate in various methods of treatment. In this way the care of mental illness can be assimilated to that of physical illness, and increasingly dissociated from destitution and the Poor Law.

All these misfortunes can be classed under the head of Disease ; the second kind of misfortune cared for by the local authority is Destitution. Whenever a man (or woman) is unable to provide himself with the food or medical treatment that he

¹ In particular, the National Institute for the Blind. '

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needs, he can obtain assistance, on the ground that he has become a member of the misfortune-group of the destitute. The assistance may be in the form of food or money, medicine or surgical appliances¹; or the local authority may apprentice the man's children or allot him land. In any of these cases the relief is called domiciliary, because the man continues to live at home. Otherwise, relief may consist of board and lodging, either temporarily or for the rest of his life, in an institution provided by the local authority. Whatever form the assistance may take, it is given as a loan, which can be recovered from him or from anyone legally responsible for his maintenance, who is financially in a position to pay. But relief must be given, whether there is any prospect of recovering the cost or not.

Special provision is made in the casual wards of certain institutions for "tramps." A wayfarer requiring temporary accommodation is given a bath in clean water, and a night-shirt which no one else has used since it was last washed. He is usually required to stay two nights and do a day's work in the meanwhile for which he is not paid, but he can expect a free meat-dinner, as well as other meals, and a bed to sleep in. Consequently it is possible for a man (or woman) to spend his time travelling about England without any money and yet without danger of starvation; but the fare provided in some casual wards is not such as to encourage this type of travel.

¹ There seems to be no legal reason why a comparatively rich man who finds himself in need of highly expensive radium treatment should not apply successfully for relief, on the ground that he could not afford the "necessary" treatment.

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When methods of providing these various services are discussed in a later chapter, more will be said of the relation of these several misfortune-groups to each other, and of the change which is coming about in this branch of local government since the abolition of the Guardians, who previously existed simply for the purpose of assisting the destitute. At this point, we must leave the services concerned directly with man, and turn to those designed to deal with his environment.

These, it was said, are of three kinds : Provision, Prevention and Removal. What, in the first place, is provided ? Pure water, fresh air, light, and decent lodging are some of the necessities which local authorities must secure, directly or indirectly, for everyone living in the area. In 1924, only one-quarter of all the rural parishes in England and Wales had a piped water supply ; the others were dependent on wells which might dry up in a season of drought and were usually liable to pollution ; and in 1931 the Minister of Health reported : " There is still much to be done before conditions as regards water supply in rural areas can be regarded as generally satisfactory." But in that year over 18 million pounds were expended on water-works out of the revenue accounts of local authorities in England and Wales, and the loan debt for the same purpose outstanding at the end of the year was considerably more than 160 millions.

Fresh air and light are made available by various activities of local government. The most important is the making and enforcing of by-laws, which regulate the size of windows and other means of ventilation in houses, cinemas and other kinds of

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building. By this same method, various other characteristics of a healthy environment can be secured : for instance, the proprietors of lodging-houses can be made to provide their lodgers with proper conveniences, and the owners of houses let at rentals below a certain limit to provide their tenants with clean water and decent sanitary arrangements. Another activity which serves a similar purpose is town-planning, and consists in securing that, as far as possible, building and the general development of a site proceed in such a way that open spaces are preserved, the average number of houses never exceeds a certain figure (usually twelve to the acre), and residential quarters are not spoilt by factories or any other symptom of industrialization. Town-planning is achieved by an elaborate process which begins with the preparation of a scheme by a local authority or group of authorities. There is a statutory obligation on all authorities in urban areas where the population is 20,000 or over to prepare these schemes ; but many other authorities are *allowed* to do so.

There are also various ways in which a local authority can provide a healthy environment even where mistakes have been made in the past and slums have grown up. The chief obstacle in the way of slum-clearance is the difficulty of supplying those who are displaced by the demolition of their houses with accommodation at a rent low enough for them to pay. But the Housing Act of 1930 has perhaps made it easier for action to be taken ; for it puts three alternative methods at the disposal of local authorities : to declare a slum to be a Clearance Area, to declare it an Improvement Area, or to deal with particular insanitary houses, accord-

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ing to the degree of squalor prevailing there.¹ Allowances can be paid to inhabitants displaced from their homes, and also as compensation for the disturbance of their trade or other business.

Wherever the population of a place exceeds 20,000, the local authority at least every five years must review housing conditions throughout the area, and make a plan of whatever building or clearance is needed, in order to cure defects in the accommodation used by the so-called working-class part of the population. The problem of a healthy environment arises chiefly in towns, but the rural population can also claim the attention of the local authority, and Acts of Parliament are in force for the special benefit of agricultural workers.

Besides having houses demolished or repaired when they become unfit for human habitation, local authorities can also build; and they are especially encouraged to build the kind of house that can be let at rents low enough to be payable by the poorer members of society. Here again local authorities can co-operate with private enterprise, by encouraging the foundation and activity of Public Utility Societies, which are then directly responsible for building the houses. Comparatively little use has been made of this power, but the St. Pancras House Improvement Society furnishes

¹ The main difference between a Clearance and an Improvement Area is that *all* the houses in the former have to be demolished, whereas an Improvement Area contains patches of property which are not thought to require such drastic treatment. In neither case need the local authority buy the site, for it can order the owners of property to clear it, and if they refuse, it can do the work of demolition itself and charge the expense to the owners.

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a good example of what can be done by voluntary organization, and suggests that local authorities would be well advised to co-operate more than they do with agencies of this kind.¹ The Society, among other activities, acquired a large block of property, in a part of London called Somers Town, consisting of unfit dwelling-houses, and decided to reconstruct the area completely. All the displaced families have been accommodated in a series of flats, built by the Society on a part of the site, and the rents paid are, on the average, no higher than those paid for slum-tenements in the neighbourhood.² This may be taken as the ideal at which the local authorities of areas which contain slums are supposed to be aiming.

There is no rigid line to be drawn between the service of providing a healthy environment and those of Prevention and Removal. Food is the principal subject with which the preventive activity of local government is concerned. Dirt must not be allowed to settle on milk, bread, meat or other commodities offered for sale; milk from tuberculous cows must be prevented from coming into the market; tinned goods which would cause ptomaine poisoning must not be bought or sold, and (to take one instance of another kind) there must be no excess of preservative in cream. Nor should salesmen be allowed to label goods improperly: the local authority prevents an article from being described as "Rum and Butter Toffee" (for example), when it is found to contain no

¹ See Housing Act, 1930, and Section 70 of Housing Act, 1925. Co-operation of this kind was started by the Housing and Town Planning Act, 1919, under which some 4,500 houses were built by 79 Societies.

² See Ministry of Health Report, 1930/31, p. 109.

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butter and the "rum" is supplied by synthetic flavouring. Nor may inconvenience be caused by the use of weights or measures which are not according to the standard. Factories moreover must be prevented from polluting rivers with their trade-effluents, and from unreasonably darkening the air with smoke. Persons carrying on offensive trades (the knacker, fell-monger, bone-boiler, etc.) must do so without causing more unpleasantness than is necessary. Householders can be compelled to prevent their drains from becoming foul, their gutters and pipes from leaking, and accumulations of filth from remaining long without their gates.

The prevention of flooding and the work of land-drainage is another local government service of this kind. Its importance appears from a statement made by the Ministry of Agriculture in 1927, that one-seventh of the total area used for agriculture in England and Wales depended for its fertility on arterial drainage.

Finally, the prevention of the spread of disease in animals, by slaughtering those already infected (and paying compensation to their owners), regulating the movement of animals from one part of the country to another, and so on, is a duty of certain local authorities.

But certain offences must needs come, and these must be removed. House-refuse must be collected and cleared away, the streets must be scavenged, and sewage disposed of; when rivers have been polluted they must be purified. Not only can verminous houses be forcibly cleaned, but verminous men too; offensive advertisements cannot be so drastically dealt with, but the nuisance arising from them can be abated. Rats too can be destroyed,

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and motorists prosecuted for exceeding a local speed-limit or making too much noise.

This completes a preliminary review of the Welfare Services which together constitute perhaps the most important part of modern English local government. Before proceeding to the third and last group of services, which it was decided to label Convenience, two points of general interest are worth emphasizing. First, local authorities have *sole* responsibility for comparatively few of the services discussed above: in maternity and child welfare, education, the provision of hospitals and other medical service, water-supply and house-building, the local authority is only one worker among others. Further, many services which are closely related to certain parts of local government are at present undertaken by the central government. The administration of sickness and other benefits under the National Health Insurance Scheme, and of pensions, as well as the granting of unemployment benefit, is clearly work which needs continually to be co-ordinated with the corresponding local government services. There are, then, three separate sources from which the consumer of welfare services is supplied: central government, local government, and voluntary enterprise.

In some respects the local authority is in a specially fortunate position for effecting what it sets out to do; for it has not only been given privileges by Parliament which allow it to acquire land and money compulsorily and do many other acts which a private citizen or company could not legally do, it can also claim to represent the public opinion of the place, and to be acting in the common interest. But in other respects it is under peculiar disadvantages. It cannot experiment as

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easily as an unofficial body, in education for instance or housing; its discretion is so limited by law and precedent, that in dealing with individuals its sympathy is almost invariably less intelligent than that of a private person; nor can it always obtain the help of those personal influences which play so large a part in the success of an undertaking like the slum-clearance of Somers Town. Indeed it seems certain that official activity will always need to be supplemented by unofficial effort, if the services which together make up this part of local government are to be satisfactorily provided.

A second, and equally obvious, fact to be noticed about the welfare services is that they are not provided uniformly in all parts of England. One of the principal reasons why there should be *local* government at all, is the variety of circumstances to be found within the borders of a single country. The rural areas have different needs from the urban, and the resources of no two areas are the same. If one law regarding welfare services were uniformly enforced throughout the country, it would either provide so little that the general standard would be incomparably lower than a large number of areas could afford, or it would insist on a standard of services far beyond the financial capacity of the poorer districts. When we come later to discuss finance, we shall see that the system existing in 1932 rests upon a compromise. A sum equal to more than half the money raised by local authorities through local taxation, is provided for their benefit out of national revenues, collected by the central government in taxes which are levied over the country as a whole. The local authorities themselves have the opportunity of regulating a considerable portion

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of their expenditure in accordance with the wishes and financial capacity of the local inhabitants. Thus it happens that no general account of the services which it is the business of local government to provide should be taken as implying that *all* these services are available over the whole of England. There is one national minimum,—though Parliament has not prescribed one and the same minimum for urban and rural areas—and if local authorities fail to provide the services prescribed by that limit,¹ they are failing to fulfil their statutory obligations and can be proceeded against like any other law-breaker. But between the minimum of services which must be provided, and the maximum which a local authority may not legally exceed, there is a wide area of discretion; so that no two areas have precisely the same provision made for them by local government.

Finally there are the services of Convenience. Roads and bridges are of outstanding importance within the class. These (and cemeteries) must be provided and maintained; but no other service of this group is necessarily undertaken by a local authority, and few others are provided in any but urban areas. Transport can be provided, by tram or “trolley,” and in many places by omnibus too; heat, power and artificial light, in the form of gas or electricity, can also be supplied under certain conditions. Libraries and museums, public baths and wash-houses, markets and public conveniences also fall under this heading.

Further, some local authorities can purchase or

¹ Where precisely the line is to be drawn, can never be foretold with certainty, except when the central authority (say the Board of Education) has issued specific instructions.

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hire land for allotments, and must do so, when there is a demand which cannot be satisfied on reasonable terms by voluntary arrangement between the applicants on the one hand and owners of suitable land on the other. These allotments are pieces of land, usually not more than five acres in extent, and are let by the local authority to any member of the "resident labouring population." They furnish another instance of voluntary associations co-operating with the local authority, for usually when allotments are provided, an allotments association is formed with which the local authority deals. A similar duty falls on certain authorities of providing small-holdings—that is, pieces of land between one and fifty acres in extent, of less than £100 annual value—for persons who desire "to buy or lease and themselves cultivate" the holding. If small-holdings cannot be provided without incurring loss, the local authority has the power but not the duty of providing them.

Under the category of Convenience falls that part of local government which is usually known as municipal trade, though some municipal trading enterprises, such as water-supply and house-building, are concerned with so necessary a part of man's environment that they come rather within the group of welfare services. No local authority has a general power of trading. The various services which exist are a miscellaneous collection, and we can find few principles which Parliament seems to have followed in allowing or encouraging extensions of municipal trade; but there are one or two heads under which most of the services fall.

First there are the services which cannot be

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provided without encroaching on private rights : for instance roads and bridges. Without compulsory powers of purchase these services could hardly be provided at all, and even if they could, only at a prohibitive cost. If compulsory powers are to be given, a public authority seems to be the obvious ¹ body to receive them ; and if the service requires local knowledge and a local organization for its provision, it is natural enough to entrust the power to a local rather than a central authority.

Secondly, there are services which require co-ordination with services already provided by the local authority. Tram-lines, electric cables, gas mains, drain pipes, cannot be laid without taking up the roadway ; so there is reason on this account to let the road-authority provide these other services. Further, many of these are also of such vital importance to the health of the community, and so closely allied by nature to the welfare services which local authorities already provide, that there is another strong argument for allowing such forms of municipal trade. If the service is a "natural monopoly" whose provision should obviously be entrusted to a single body, the argument for making it a municipal undertaking is considerably strengthened. It has also to be remembered that many of these services would not be supplied at all, if they were left to private enterprise, for no private company would consider them paying propositions.

¹ In the nineteenth century, it seemed equally obvious to Parliament that the body to whom compulsory powers should be given for the purpose of railway-construction was the Joint Stock Railway Company, managed primarily in the interests of the shareholder.

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Lastly, there are markets and the like which may always have belonged to the corporation, or anyhow seem to be more properly owned by the local community than by any private person, because the benefit or profit resulting from them is due to some special characteristic of the locality. The hot mineral baths at Bath and the race-course at Doncaster are special cases of this same kind of local enterprise.

This classification is not, of course, complete. Municipal trade is perhaps the most controversial part of the whole subject of local government ; and there is much to be said on both sides when any specific question of the kind arises. But it is generally true to say that when a service is such (*a*) that the undertaker must have special powers of overriding private interests, or (*b*) that its provision is closely bound up with some activity for which the local authority is already responsible, or (*c*) that it is most economically run as a monopoly (and the consumer therefore needs special protection from abuse), or (*d*) that it will not be undertaken by private enterprise for profit, or (*e*) that it is connected with some piece of property belonging to the citizens at large or with a peculiar local amenity, then the local authority is often allowed by Parliament to provide the service.

House-building is a border-line case which occasions more dispute than any other kindred question ; for this service is not a natural monopoly : if a local authority starts building, it finds itself in competition with private enterprise. And yet it is an essential service, closely related on all sides to local government activities, and one that has not been adequately provided by the private builder.

CHAPTER III

AREAS AND AUTHORITIES

BEFORE considering what the local government areas actually are, we must ask what principles might reasonably be expected to underlie the geographical arrangement.

From a political point of view, the area chosen should be such that at least a majority of the local inhabitants have a common interest (whether it be a social or a business interest) in each of the particular services to be provided; further, this common interest should be peculiar to the local population, for otherwise there is no reason why the area should have a political organization of its own. Clearly the area will be a still better political unit, if the population has other interests in common beside the interest in local government services; and this condition is more likely to be fulfilled if traditional divisions of the country are adopted, and only altered when it becomes absolutely necessary.

Secondly, there are administrative considerations: the size of the population, its wealth, and the geography of the area must each be suitable; and since it is unlikely either that the same area will be suitable for all local government purposes or that the population will remain constant, the geographical arrangement must be flexible: it should be possible (for instance) to group the areas in several

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different ways, and to alter their boundaries when population or industrial activity moves from one place to another. Evidently then the administrative and political points of view are not always easy to reconcile.

How is the map of England in fact divided? There is no simple answer to the question, because no one map of England can be drawn for all local government purposes. For police there is one partition of the country, and for the various welfare services several more divisions have been made: the education map, for instance, is different from the public assistance map. To show the areas accurately there would have to be drawn almost as many maps as there are local government services. But there is nevertheless a single geographical arrangement underlying this great variety, and once that is understood the other partitions of the country are very much easier to describe; for this primary system of local government areas is a basis on which are built up the several pieces of machinery for providing the various services; and it is in each of the primary units that a local council is elected.¹

To understand this fundamental structure, take a map of England and Wales and first abstract London.² This removes some $4\frac{1}{2}$ million souls, and

¹ However, the country has recently been divided for various purposes into areas which are *not* constructed out of the primary units. Catchment areas, for instance, have been delimited under the Land Drainage Act, 1930; there has been a special division of the country into 13 parts under the Road Traffic Act, 1930; and the whole of England, Scotland and Wales has by now been partitioned by the Electricity Commissioners and the Central Electricity Board into large areas with a sufficient number of selected generating stations in each.

² See Map, pages 246 and 247.

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an area which includes a large part of the geographical counties of Middlesex, Surrey, Kent and Essex. The abstracted area can now be divided into twenty-nine parts, twenty-eight Metropolitan Boroughs and the City, which together constitute the County of London.¹

From the rest of the map, eighty-three more holes have now to be cut. Most of these are big cities: Birmingham, Liverpool, Manchester and Sheffield are the largest of them, with over half a million inhabitants each²; another eight of them, such as Newcastle-on-Tyne, have populations between a quarter and half a million; and twenty-six more, like Blackburn, have over 100,000 each. About half the total number are smaller: in fact Canterbury has under 25,000. By extracting these eighty-three cities—the County Boroughs, as they are called—we have thought away another 13 million people in all.

The map now looks the worse for wear. There are holes everywhere, but they are by no means symmetrically arranged. The Black Country, round Birmingham, has been badly mangled; there is little left in the neighbourhood of Liverpool, and parts of West Yorkshire and County Durham have disappeared. But it is this remnant of a map,

¹ There are various other Londons, each with its own boundary: a Water London, a Police London (the area, known as Greater London, which includes the City and the Metropolitan Police District, and contains over 8 million people, that is, about a fifth of the total population of England and Wales), the area of the London and Home Counties Joint Electricity Authority, and that of the London and Home Counties Traffic Advisory Committee.

² In 1931 the population of Birmingham exceeded a million; and that of both Liverpool and Manchester three-quarters of a million.

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not the original England and Wales, that must now be divided into sixty-one irregular patches, which are called administrative counties. These areas vary considerably in size. Half of them cover an area of less than 500,000 acres each; one of them contains barely 20,000 inhabitants; but the five largest cover more than a million acres each. Their boundaries usually appear to be quite arbitrary and unsuitable, though occasionally they follow a natural feature which some hundreds of years ago was no doubt appropriate enough: the Thames, for instance, provides a boundary on the south of four counties and on the north of three; Essex and Suffolk, Suffolk and Norfolk are separated by rivers. Indeed, many of the boundaries have been inherited from the days of the Saxon Heptarchy. But some of these administrative counties (and that is the only kind of county with which we are concerned) are parts of what was once for all purposes, and continues for some purposes to be, a single county. The "parts" of Holland, Kesteven and Lindsey make up the old county of Lincolnshire. Yorkshire contains three administrative counties called the North, West and East Ridings; ¹ there are two Suffolks, East and West; and two Sussexes. With London, which is also an administrative county, there are sixty-two members of this species: twelve counties in Wales, forty-nine in England, and Monmouth between the two.²

The next stage is the closer examination of some one of these counties. Take Oxfordshire.³ This

¹ The name bears no reference to the distance a man could ride in a day, but is derived from "Thirlinging."

² The Scilly Isles constitute a sixty-third county, which will not be considered further.

³ See Map, page 245.

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straggling area has been already pock-marked by the abstraction of Oxford ; for Oxford is a county borough, and forms no part of the administrative county of Oxfordshire. But the seven other towns of the county are in quite a different position ; for they are part and parcel of the county, whether they have obtained charters of incorporation and the name of borough, as four of them have done, or whether, like the other three, they have to remain content with the disagreeable name of urban district. All of the county that is left after the exclusion of these seven small towns can now be apportioned among six rural districts. None of these districts overlap any urban district or borough, and all are contained within the county boundaries. Each contains country of various kinds : villages, small urban centres, suburban areas perhaps, and the intervening agricultural land ; and each is divided into parishes.

This then is the structure on which the local government of England rests. The administrative county of London would require separate description ; and the county boroughs belong to a type of self-contained unit which again has a character of its own. All the land outside London and the county boroughs is divided into counties ; each county into boroughs and urban districts on the one hand and rural districts on the other ; and each rural district into parishes.¹ Every square foot of land, then, falls within either a county borough or

¹ There are urban parishes, as well as these rural parishes ; but the former are of no importance in this context. In 1930, there were 258 non-county boroughs in England and Wales, 778 urban districts, 643 rural districts (but only 635 rural district councils), 7,100 parishes which had councils of their own, and 5,600 parishes with only "meetings."

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a county, and no square foot in both ; there is no part of a county which is not within either an urban area (borough or urban district) or a rural district, and every part of a rural district is also part of a parish. These several kinds of area and the relations that exist between one and another have come to their present state after a long process of gradual adaptation : the logical order in which the local government map has been described above is very different from the historical order in which parts of the structure have come into being.

Each of these areas has its own institution of representative government. The parish has either a "meeting," if the population is very small, or a council ; and every rural district, urban district, borough, county and county borough has its own council too.¹ These councils are the local authorities of England and Wales, and the principal instruments of local government. There are other authorities,² some of which will be mentioned later ; but these councils together constitute the main part of the machinery through which the services described in the first chapter have to be provided. For the areas in which these councils have authority are not merely administrative divisions. The people living within each are treated as if they formed a local community, and had a common mind whose will deserved expression. It is true that some of the areas overlap ; but this only

¹ Borough, urban and rural district councils are commonly referred to as "county district councils" or "district councils." It is convenient to have a phrase to include these various local authorities, all of which have jurisdiction within the county.

² In 1930, for instance, there were 99 Burial Boards, 56 Harbour Authorities, 28 Port Sanitary Authorities, and 383 Land Drainage Boards.

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means that one man can be considered a member of three local communities at the same time : the parish, the rural district and the county. The question may well be asked whether this assumption is justified by the facts, and whether, even if a man *can* feel himself to be a member of these three communities, that possibility is sufficient justification for the existence of such elaborate political machinery. But whatever the truth may be, these are the assumptions which underlie the modern structure of local government.

The council of a county borough does not share its local government functions with any other local authority ; so that broadly speaking all the services of local government can be provided by the county borough council within its area. It is true that there are one or two county boroughs which do not employ a separate police force of their own but form part of the neighbouring county for this purpose ; and arrangements are often made between county borough and county for the administration of mental and other hospitals and for the common use of secondary schools.¹ For purposes of town planning, too, local authorities of these two types co-operate ; and it frequently happens that a county borough which runs its own trading enterprises arranges to supply other authorities with gas, electricity, or some service of the kind. But these instances of common action are no exception to the rule that a county borough council

¹ Children from the county are often admitted to a city school, on payment of special fees. Sometimes, for instance at Northampton, a school is provided jointly by the county and county borough, who share expenses on an agreed basis. Hereford and Herefordshire have one Education Committee and one Staff ; but this is quite exceptional.

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is its own master in the sphere of local government, and has no legal need to take cognizance of a single other local authority.

Within the county, local government services are provided by a much more complicated organization, and they must be considered one by one. Protection is the county's business, but the county council is not the authority responsible. There is a special authority for the purpose known as the Standing Joint Committee, consisting of members of the county council and Justices of the Peace (who will be described elsewhere) in equal numbers : an arrangement which should keep a certain quarrel between the two Houses of Parliament (in 1888) in continual remembrance. But this county authority is not responsible for the whole area, for certain boroughs maintain their own police forces and are in that respect like county boroughs.¹

Of the Welfare services, that concerned with maternity and child welfare is administered by some county councils (numbering 48 in 1931) and some county district councils (of which there were 241 in that year, including borough, urban and rural district councils). There is no principle in this division of labour between the different types of authority. The variety of practice is due simply to the fact that various councils have from time to time determined to make use of their power under a general law which allows local authorities of more than one type to undertake this work. But since the Local Government Act of 1929 the tendency has been for counties rather than district councils to become responsible, for there is a clause

¹ Similarly, the few county boroughs which do not control their own police are in that respect like ordinary boroughs.

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in that Act which encourages elementary education authorities to make themselves responsible for maternity and child welfare also, so that the child shall be under the continuous care of one authority from birth till the time when he has finished his education. County councils are making use of this power : for instance, in the course of the year 1930 six of them applied successfully to the Ministry of Health for orders transferring to them, as education authorities, the responsibility for maternity and child welfare, which had previously fallen on some twenty-one district councils.

The county council is responsible for education. But here again there is an important exception ; for the councils of certain urban areas manage their own systems of *elementary* education.¹ This means that in a borough or urban district which in 1901 had a population above the minimum prescribed by a Parliamentary statute of that time, the children are educated by the local council until they leave the stage of elementary education.² But if they can afford secondary education, they cannot obtain this from the council which gave them elementary education, but only from the county council or from private enterprise. The extent of this multiplication of authorities for education is partly shown by the actual numbers. In 1930 there were not only 147 authorities for education of both the elementary and secondary

¹ The borough of Banbury, for instance, in Oxfordshire. Borough and urban district councils of this kind are sometimes called " Part III Authorities," because Part III of the Education Act 1921 describes their position.

² Usually at the age of 14, but if they go to a central school (which is part of the elementary system), probably at the age of 16.

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kind in England and Wales, but 170 others which had charge of elementary education only, the one group consisting of the education committees of county and county borough councils, and the other of the corresponding committees of certain borough and urban district councils.

There are naturally several disadvantages in this complicated division of responsibility: for instance, a district council which is responsible for elementary education may run a central school in direct competition with the county secondary school. And the difficulties are further increased by the fact that there are two classes of elementary school. Some are wholly provided by the local authority, and go by the name of Council or Provided Schools; others were originally built and continue to be supported by some voluntary institution—the Church of England, for instance, or the Roman Catholics—and are accordingly known by the unbecoming title of Non-provided. In order to bring these schools within the system, a compromise has to be reached in each case between the owners or trustees and the local authority; and although this compromise enables the local authority to have *some* control over all the establishments for elementary education within its area, the unfortunate fact that it has complete authority over none but the provided schools makes any re-grouping or radical reorganization of schools extremely difficult. For non-provided schools of different denominational character (Roman Catholic and Church of England, for instance) can only be grouped together if the managers of all the schools consent; and it is therefore possible for a scheme of re-organization to be partially or even completely wrecked by the

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managers of any one of the non-provided schools in the area.

The greatness of this difficulty can be guessed from the relative numbers of provided and non-provided schools in England. In 1930 there were 9,548 of the former, and as many as 11,255 of the latter.¹ The Church of England owned 9,677 of the non-provided schools, the Roman Catholics 1,177, the Wesleyans 118, the Jews 12, and other institutions or private persons 271.

Nevertheless considerable progress has been made, since the Education Act of 1918 was passed, in the work of reorganization. The two chief ends in view are to abolish the artificial distinction between elementary and other forms of education, and to secure that at the age of 11 all children start receiving "post-primary" education in the senior departments of either central or secondary schools. The method which county councils are encouraged to pursue is to classify the children as infants until they are 8 years old, as juniors between the ages of 8 and 11, and as seniors when they are 11 or over. Reorganization had proceeded so far in these directions by 1930, that 15·3% of the total number of pupils in elementary schools who were 11 years old or over had been accommodated in departments classified as Senior; 17% of children in the second age-group were being taught in Junior Departments; and 61% of the third group in Infant Departments.

Any county council which attempts to proceed on these lines has to divide its area into portions

¹ The number of pupils on the registers of council schools was over 3½ million, of Church of England schools less than a million and a half, and of Roman Catholic schools less than half a million.

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which may bear little resemblance to the original county districts ; for each area must, if possible, contain not only a group of school-buildings which can conveniently become the senior school (to which children may pass on at the age of 11 or 12 from the junior schools), but also a population of school-age neither too large nor too small to supply the senior school with a proper number of pupils. A special education map has therefore to be made within the boundaries of the administrative county, for the primary division of the county into districts becomes almost irrelevant.

Such are the ways in which the local authorities of a county are related to each other for the purpose of serving age-groups of the local community. The question then arises whether the division of labour between authorities who serve the misfortune-groups is the same, and the answer is clearly no. There is one organization for dealing with disease, and another for destitution, and each is different from the system described above ; yet another arrangement exists for the services concerned with environment. Though no complete account can be attempted of any one of these complicated systems, something must be said of each in turn.

The county council is alone responsible for everything to do with lunacy, mental deficiency, tuberculosis, smallpox and venereal disease. That at least is simple, and the reason is clear enough : when a service requires the provision of treatment in an institution, it can only be administered economically over a large area, especially when the number of persons requiring treatment at any one time is likely to be small. Though the other infectious diseases have in the first place to be

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dealt with by the district councils, yet under the Local Government Act of 1929 county councils now have the duty of reviewing all the arrangements made throughout the county and of taking steps to remedy any defect. This implies that the county must be specially partitioned once more. The areas which result bear no necessary resemblance to any other divisions of the county; for the disposition of existing hospitals is naturally the chief consideration in defining them. Somerset, for instance, planned to divide the area of the county into nine parts, for the purpose of securing accommodation in isolation hospitals for anyone in the county who might need it: whereas its educational plan involved the formation of sixty-three "senior school areas."

The county council too is alone responsible for the care of the destitute throughout its area; but though the district councils as such do not here have any part to play, their members have some share in the administration of the service. Each county council has had to formulate a scheme of administration for its area, and all the schemes in England and Wales (except three) provide for yet another special division of the county into districts. For each district there must be a Guardians Committee, acting as a sub-committee of whichever county committee happens to be concerned with public assistance. Their share in the work is to examine applicants and determine what amount and what kind of relief should be given; they are also responsible for visiting those who receive relief in their homes and for fixing the proportion of relief to be repaid by the recipient or those liable to maintain him; and they can manage institutions if the duty be delegated to

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them by the county committee—which has in fact happened in more than half the counties. Somerset may serve again as an example. The same seven areas into which the county had been divided for the purposes of assessment (under the Rating and Valuation Act, 1925)¹ have been adopted as Guardians Committee areas; and as the boundaries do not cut across the divisions already existing between urban districts, rural districts and boroughs, the county systems of assessment and public assistance are both built up out of the primary local government units.²

Each Guardians Committee is composed of thirty-six members, twelve of whom are appointed by the county council from men and women who live in the area and have experience of work among the destitute, but who are *not* elected members of the council; three or four are county councillors representing electoral divisions in the area; and the remainder consists of persons nominated by the district councils. Through these nominations the district councils have some say in the administration of public assistance; but this indirect influence is strictly limited, for such matters as finance and the appointment of officers are entirely controlled by the county authority, and even powers which have been delegated to the Guardians Committees can always be reclaimed by the county council, provided it can obtain the consent of the Ministry of Health to an alteration of the scheme.

¹ The meaning of assessment will be discussed later.

² In more than half the counties, the Guardians Committee areas wholly or approximately coincide with assessment areas. In Oxfordshire there are six Guardians Committee areas, coterminous with the rural districts, and four assessment areas.

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Provision of the services concerned with environment involves the local authorities within a county in relationships still more complicated than any which have been described hitherto. The district councils are primarily responsible for most of the services in this group, whether of provision, prevention or removal; but the first complication is introduced by the parish authorities. In every rural parish there is a parish meeting, and in all parishes with population above 300 (and in some others) there are parish councils too. These authorities are principally concerned with the management of parish property, but they have the right to complain to their district council of bad water-supply, unhealthy dwellings, or any other defect in the council's administration of the sanitary services. Further, they can make their complaint to the county council, if the district council continues to displease them. The district council has therefore to remember the various parish authorities within the area, and for this reason (among others) is not entirely its own master. Some councils wisely make deliberate use of the parish councils, and employ them as agents for the execution of certain sanitary duties. Other district councils set up Parochial Committees, which at least in part consist of members of the parish authority and help to secure co-operation between the two types of council.

But the more complex relationship is between district councils and the county council. In the first place, county councils have certain functions of their own, which overlap or supplement the work of district councils. It has already been said that the duty of providing maternity and child welfare services is shared between the district councils and

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the county, and there is similar overlapping of function in other welfare services. One of the county council's duties, for instance, is to prevent the pollution of rivers; and this is obviously related to the work of the districts in securing a supply of clean water and disposing of sewage. Another of the county's duties has to do with diseases of animals, in which the district councils are again interested, since they are responsible among other things for preventing the sale of impure milk and diseased meat. Further, county and district councils are jointly interested in the setting up of regional advisory committees on water supply; for the fact is being realized more and more clearly that a county district is usually too small an area for the effective and economical provision of water, and these advisory committees are concerned with areas which include several districts and perhaps the whole county.

Similarly the county can now play an important part in the work of town planning. District councils are still primarily responsible for initiating schemes of town planning; but the county council is entitled by the 1929 Act to proper representation on any joint town-planning committee, whether advisory or executive, which covers any part of the county; it can even promote the formation of joint committees itself, and can ask the Minister of Health to authorize the establishment of these committees where local efforts fail.¹ Moreover,

¹ Cheshire County Council, for instance, in 1930 suggested the formation of four Executive Joint Town Planning Committees (covering the area of the so-called Mid-Cheshire Joint Town Planning Advisory Committee), and conferred with the local authorities in the hope of securing that the whole county area should be planned as soon as possible.

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a county council can make by-laws on a great variety of subjects (the regulation of advertisements, for instance, or the management of dairies), and these are valid in all parts of the area except the boroughs. Since many of the district councils have a similar power, consultation is often necessary between the two types of authority if by-laws are to be satisfactorily drafted.¹

But besides performing certain functions which overlap and supplement the sanitary work of the district councils, the county council stands related to the districts in two other respects: first as Supervisor, and secondly as Assistant.

It is a statutory duty of the county council to supervise the whole of the medical and sanitary arrangements throughout the county, and in particular (for instance, under the Housing Act of 1930) to watch the housing conditions in rural districts and satisfy itself that adequate steps are being taken to secure all necessary improvements. Further, parish authorities (as we saw) can complain over the head of the rural district council to the county about any defect in the sanitary services provided in their area. When a complaint is made, say about sewage, the county council holds an inquiry (at which, incidentally, the aggrieved parish has no right to be represented), and then according to the facts revealed either takes no action or tells the district council to do its duty. If this has no effect, the county council can do the work itself and charge expenses to the district ;

¹ Co-operation of another kind is found, when a county council delegates certain of its powers to a district council for local services ; or when a district council (as more often happens) allows certain of its functions (town planning and housing, for instance) to be transferred to the county council. This is the simplest arrangement of all.

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but the county is naturally not anxious to undertake work to which it is not accustomed, and there is usually no need ; for most district councils are stimulated to do their duty by the prospect not only of losing all chance of financial assistance from the county, but also (perhaps) of finding that their misdeeds have been brought to the notice of the Minister of Health.

But the supervision of district councils by the county does not consist only in taking action of this kind on the complaint of a parish. The county council has to employ a full-time medical officer of health, and a special committee must be appointed to attend to the public health and housing of the county. Since the medical officers employed by district councils are bound by statute to give the county officer all information which he can reasonably require, a tactful and energetic man can keep himself informed of conditions throughout the whole area of the county, so far as water-supply, housing, sewage, cleansing and similar services are concerned ; for not only does he receive a copy of the annual report which each district medical officer has to send to the Ministry of Health, but he can also induce the officer of any district which he visits to accompany him personally on a tour of the place and answer his questions ; and the district officer knows that if he should refuse, he can be asked to supply answers in writing to any inquiry the county officer chooses to make.

Since the 1929 Act was passed, district medical officers have been brought more definitely than heretofore within the sphere of the county council's activity. A section of that Act lays on each county council the duty of arranging, after consultation with the councils of the county districts, that no

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medical officer of health subsequently appointed for any district shall engage in private practice. At the end of 1931, only 382 medical officers in England out of some 1,200 were whole-time appointments. County councils therefore have a considerable task before them ; for the majority of county districts have neither sufficient resources to pay the salary of a whole-time man nor areas large enough to occupy him, so that some complicated arrangement has to be devised. In Somerset, for instance, which contained no local government unit large or rich enough to have a whole-time officer of its own, a scheme was put forward for the division of the county into twelve areas, determined after consideration of such facts as the population, the "school-population," the acreage of the districts, and the salaries usually paid to district medical officers. Here, then, is another special partitioning of the county for a particular purpose ; and similar schemes will have to be devised for the whole of England, if the 1929 Act is to be obeyed.

Besides supervising the district councils, the county also comes to their assistance in various ways. One form of help which is continually given (for instance in connection with town planning) is advice: a kind which is made available less often is money. Under the Housing Acts county councils must give rural district councils not less than a certain sum of money for each new house in the district occupied by a member of "the agricultural population." Grants such as these are given almost automatically, and the district council can rely on receiving them unless it quarrels too seriously with the county council. But there are two ways in which the county can, if it so chooses, help a district still further. Under

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the 1929 Act, it can give unlimited financial assistance to the sanitary services of any district council. When such a grant has been given, the county has no special right to interfere with the spending of it, and this kind of generosity is therefore unlikely to be shown to a district council whose conduct has not been satisfactory in the past. And secondly, when a district council wants to borrow, the county can either itself lend the money or else raise a loan on behalf of the district.

This rough sketch does not at all adequately describe the tangle of areas and authorities which are concerned together in providing the various Welfare services. There remain the services of Convenience.

Roads and bridges alone in this group need description in any detail; for as almost all other services of convenience are supplied only by boroughs (which in this respect are indistinguishable from county boroughs) the county council remains officially uninterested. The county and county borough councils are principally responsible for highways since the passing of the 1929 Act; and here again there is nothing to be said about the county borough councils, for they have no other authority within their boundaries to consider and are as much their own masters for this service as for purposes of Welfare. But the county councils are in a very different position.

There are four kinds of road in the county to be considered: main roads in urban areas and main roads in rural areas; side streets in urban areas and minor roads in rural areas. Side streets are not the concern of the county council at all: the urban authority is completely responsible for them,

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unless they are delegated to the county under an agreed arrangement; but the county council is financially responsible for *all* the other roads. The district councils, however, have the right of claiming that some share in the administration of this service be delegated to them. The extent of the claim varies from one type of authority to another. An urban district council can claim the delegation of its main roads; but the rural authority can only claim the minor roads, and the county council has more freedom to refuse such a claim.¹ Each county, then, has its own peculiarities of highway administration. For the sake of example, certain points in the scheme adopted by Leicestershire are worth notice. A special district advisory committee has been set up in each of five areas (into which the county has been specially divided for the purpose), constituted in rather the same way as a Guardians Committee and including representatives of all district councils in the area. A large part of the day-to-day administration of all the roads is delegated to these committees, but they are definitely subordinate to the committee of the county council which deals with roads, and they act as sub-committees of it.

All the functions discussed so far involve the various local authorities in expenditure. The subject of finance is reserved for a separate chapter; but that aspect of it must be mentioned here which concerns the mutual relations of the county and the other types of authority. The county borough, as usual, stands quite alone and needs no consideration at this stage, for it is a self-contained unit

¹ The Minister of Transport has the last word in deciding the division of labour, for to him a district council whose claim is rejected by the county council can appeal.

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for the purposes both of raising and spending money.

Within the county, each authority decides for itself how much money it must raise in order to provide the particular services for which it is responsible. But whereas the councils of rural and urban districts and of boroughs are rating authorities, and themselves collect from the rate-payers whatever money they need, the county council is not a rating authority. It therefore makes the district councils, who are its agents for this purpose and have no discretion in the matter, collect and hand over to it whatever money it requires.

Before money can be raised in this way, a list has to be drawn up containing the valuation of each piece of property whose occupier can legally be made to pay rates. The drafting of this valuation list is, like rate-collecting, the duty of the district councils; but in order to secure some measure of uniformity in the valuation lists of the various districts, the county council appoints a valuation committee, which has to advise the several councils responsible for the valuation lists.

That is not all. The county is divided into special assessment areas (which, as was said, often correspond closely to the Guardians Committee areas), for each of which a committee is appointed consisting of representatives both of the district councils having responsibility within the area and of the county council. The function of these assessment committees is really judicial, for they act as tribunals before which complaints are brought against the draft valuation lists. But in fact they can, if they choose, almost usurp the function of the district councils and substantially alter the valuation lists; for they can employ their

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own valuation officer, and take his advice on the value of any property in the list, whether a dispute has arisen over it or not. For the performance, then, of this part of the rating function a county has again to be divided into special areas ; and the district councils and county council have to co-operate through the medium of special committees, just as they do in administering public assistance and other welfare services.

Finally, besides all these instances of co-operation and control, a county council helps the districts by performing what may be called constitutional functions for them. The most interesting is that of surveying and revising county district boundaries, for this may involve the alteration of the status of local authorities. The duty was imposed on all county councils by the 1929 Act, which prescribed not only that the first surveys must be made, and reports sent to the Minister of Health, by April 1932, but also that periodical surveys of the same kind should be undertaken at regular intervals. In this work county councils have to give district councils, and the councils of neighbouring county boroughs, an opportunity of co-operating.

In one or two counties it has been difficult to reach agreement between the various authorities, but on the whole the first survey has been carried through with surprisingly little difficulty. Considerable changes in the local government map are bound to result. The report of the special committee appointed by one county council for the purpose of the survey may perhaps be taken as typical. It recommended that all urban districts should cease their separate existence where the population of the area was less than 4,000 ; that certain urban districts should be deprived of the

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rural portion of their area; and that no parish with a population of less than 200 should continue to be a separate unit.

How necessary rationalization of this kind had become is sufficiently evident from a few figures. In 1923 there were 66 places with the status of borough which had less than 5,000 inhabitants; 85 urban districts with populations above 20,000¹ and 286 with less than 5,000; 5 rural districts over 50,000 and 117 under 5,000; and 22 parishes with no inhabitant at all. Varieties in area and rateable value among local government units of the same official type were no less astonishing. Whaley Bridge is a pleasant instance of the muddles to be found as late as December 1929. It is a small village of 3,000 inhabitants on the borders of Cheshire and Derbyshire, which was under the authority of two county councils, one urban district council, two rural district councils, three parish councils, a Joint Sewerage Board, two Boards of Guardians, a Joint Parks Committee and two assessment authorities. The rates varied in each of the parishes. It was served by three distinct and separate water schemes. Three district councils dealt with its sewers, and another authority controlled the outfall works. Its children had the choice of two elementary schools; whereas a mile or two away was the village of Furness Vale, which was not under the legal authority of any council at all.

The boundaries of a rural or urban district, but not those of a borough, can be altered by order of the county council, if a certain procedure, designed

¹ In 1931 there were 4 urban districts with populations of more than 100,000, and 11 others with populations of more than 50,000.

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to prevent abuse of the county's power,¹ is followed. Another way in which the county council can affect the internal working of a district council is by granting or refusing leave, when a council asks that it may be allowed to hold the local election once every three years instead of annually. Further, the county council has some discretion in the matter of its own elections. For instance, it is its duty, under the 1929 Act, to review the electoral divisions into which its area is divided, and to suggest alterations. If objection is made, the Home Secretary must hold a local inquiry before giving effect to the county council's proposal; but by this power the county council can practically decide how strongly the various parts of the area shall be represented. As the urban parts of a county very often think differently from the rural areas about the policy which their county council should pursue, the county council's power of determining in this way how the local constituencies shall be defined is one in which all the district councils are interested. The constitutional power of county councils over the parish is still greater. Not only can they "group, alter, unite and divide" parishes and fix the number of councillors in each, but in certain cases they can establish and even dissolve parish councils.

Yet apart from such particular powers of interference as these, the county council has no general right to treat any local authority as a subordinate. Each local council has a certain jurisdiction of its own, and so long as it keeps within its proper bounds, it need fear molestation from no one.

¹ The Order needs confirmation by the Minister of Health, who has power under the 1929 Act to modify the county council's suggestion.

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From what has been said in this chapter it must appear that the days of the rural district council in particular, and of small authorities generally, are numbered, for they have been shorn by the 1929 Act and other recent statutes of innumerable functions ; and the question naturally arises, how much further the process can go without making the work of the small authority so uninteresting that no one will take the trouble to take part in it.¹ But it is still true that parish and district councils are autonomous bodies, and that the English local government system presupposes the existence of a local community with a will of its own in every parish, rural district, urban district, and borough. Incomparably more weight is allowed to the will of the community in country and county borough ; within the county, the citizens of a borough enjoy more freedom than the inhabitants of an urban district ; and the local community in either of these urban areas has considerably more power than the community of a rural district. But the machinery of government is still based on the theory that all these units contain a local community whose will must be discovered and given some consideration.

Before leaving the primary units of local government, the flexibility of the system must briefly be examined. How can the boundaries of each area, the status and the functions of each authority be modified ? Something has already been said of the change that can take place within a county. But the county council's order cannot alter the bound-

¹ On the other hand, since the Royal Commission on Local Government issued its final report in 1929, Parliament has tended to give rural district councils the same powers as the urban authorities possess, without imposing the same obligations.

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aries of a borough, nor of its own area ; still less can the county affect in any of these respects a neighbouring county borough. If a county borough wishes to have its boundaries modified, it must apply direct to Parliament. Counties may secure the alteration of boundaries which separate one from another by the same procedure, and also by the rather simpler method of applying to the Minister of Health for a Provisional Order. In fact, very few radical changes have been made in the size of counties. The boundaries, for instance, between Gloucestershire, Warwickshire and Worcestershire, which were altered in 1930, had remained more or less intact since St. Oswald, Bishop of Worcester, secured in A.D. 964 an edict from King Edgar that all church property belonging to his diocese of Worcester should be in the county of Warwick.¹

Change of the *status* of a local authority is another way in which the government system can be adapted to new conditions. When the parish has acquired a population of 300, sometimes even sooner, a parish council may be established as local authority in addition to the parish meeting which existed before. This parish council may have progressively more work delegated to it by the rural district council, and it may be given by the Minister of Health an increasing number of urban powers, until it becomes virtually independent of the district council in respect of its local services. This transitional stage continues until its character has become definitely urban and its population increased to say four or five thousand. Then the county council may decide to convert it into an urban district council, and make an order to that

¹ Ministry of Health Report, 1930-31, p. 153.

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effect. This order requires the approval of the Minister of Health, who may send an officer to make informal inquiry on the spot. If the area and financial resources of the parish seem satisfactory to the Minister, he confirms the order, and henceforth the parish ceases to be part of the rural district from which it came, and becomes an urban district. In time its population may grow to 20,000, and it may then apply to the Crown for a municipal charter. Its claim is examined by a Committee of the Privy Council, which is guided for the most part by a report which the Minister of Health submits after holding a local inquiry into the efficiency of the administration and financial capacity of the area. If the charter is granted, the urban district becomes a borough. At some future date, when its population has reached 75,000, it may seek to become a county borough; but this application it must make direct to Parliament by the promotion of a Bill; and the Bill will not become an Act unless several conditions besides that of population have been satisfied.¹

Finally, there are changes of function. A local authority without changing its official status can alter in certain respects the nature of its work. We have already seen how this may come about by delegation from some other authority or by order of a department of the central government; and there are three other principal ways in which the functions of a local council are changed. In the first

¹ Between 1888 and 1924, 265 new urban districts were formed, and 56 non-county boroughs and 23 county boroughs created. The boundaries of a rural district were changed in 134 instances, those of an urban district in 297, those of a non-county borough in 107, and of a county borough in 100.

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place, all local councils (except the parish authorities) can promote bills in Parliament and obtain by what is called a Local Act any privilege or power which Parliament chooses to grant. This is the same procedure as that by which, as was said above, certain changes of area are effected. The powers which local authorities, especially the boroughs, acquire in this way are too various to mention in detail. One of the most important, which is often sought and usually granted, is the power to extend the principle of town planning to those areas of a town which are already covered with buildings. Birkenhead and Cardiff obtained power in 1929 to establish savings banks, following the example of Birmingham, which had been running its own municipal bank with great success since 1919. Some time ago Birmingham also obtained leave to have a municipal orchestra. Hull has been allowed to manage its own telephones and a municipal restaurant; Brighton to build and maintain an aquarium; Bournemouth to own and manage a pavilion, in which concerts and other entertainments are given on the council's responsibility. As an example of powers which even rural district councils have obtained in this way, a Bill promoted successfully in 1929 is worthy of notice, for it authorized the district council to register all trees above a certain size and to "forbid any person to lop or destroy any registered tree"; to require the removal of existing petrol pumps, and to take dictatorial action in various other directions.

When a clause has appeared frequently in Local Acts, it is sometimes made into a "Model Clause"; and if a local authority chooses to make use of this model and insert it in a Bill, there is seldom any

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difficulty in securing the passage of the Bill through Parliament.

A second means of acquiring exceptional powers is by Provisional Order, but speaking generally this way is only available when such powers are sought as Parliament has in the past been ready to grant.

The third method is the simplest of all. When Parliament legislates generally about local government, it often inserts provisions which make it possible for local authorities of a specified type to adopt the whole or certain parts of the act. This power of adoption is exercised by any local authority to which the provision applies, if a simple majority of the council resolves that the act or parts of it shall be adopted. From that time on, the council is bound by the adopted law exactly as if the act had applied automatically in the first instance. In the nineteenth century Parliament used frequently to pass Clauses Acts, which were in effect mere collections of the model clauses referred to above. Such acts could not be simply adopted, but they provided models which helped local authorities in drafting Local Bills. In the twentieth century, the principle of the Clauses Acts has been carried a step further, and Adoptive Acts are now constantly passed which relieve local councils of the need of promoting a Bill or even of seeking a Provisional Order, though rural district councils which wish to adopt an Act must usually obtain the sanction of the Minister of Health.

There are thus five statutory sources of the powers of local authorities : General Acts, Adoptive Acts, Clauses Acts, Local Acts, and Provisional Order Confirmation Acts. But it is worth noticing that often a single Act, for instance the Public Health Act 1925, contains a part which is general

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and a part which is adoptive ; and that certain Adoptive Acts merely repeat the substance of a Clauses Act, making it more readily available for the use of local authorities. It is also true that a large number of the powers given by general legislation have previously been granted to particular authorities through the medium of Local Acts.

CHAPTER IV

COUNCILS AND THE ELECTORATE

SOME account has now been given of the services which are provided by local government, the areas into which England is divided for the various purposes, and the types of authority taking part in the work. We must now look more closely at these authorities and ask of what living people they consist.

Small parishes, it was said, have no council, but a parish meeting which all the local electors may attend. This is the only form of direct government existing in England. In a parish with a population of less than 300, there is no reason why those few people who attend at the parish hall when the quarterly meeting takes place, should trouble to elect representatives: they can either transact their business for themselves, or if necessary, divide up the work by appointing committees. Besides, there is seldom much work for the parish meeting to do, for apart from the fact that it has few powers or duties, it is not normally allowed to levy a rate of more than eightpence in the pound; and its function is rather to advise and criticize than to administer services of its own.

But when the parish has grown beyond a certain size, it is thought that there should be an elected council in addition to the parish meeting, and a parish council has to be elected every third year

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by the parish meeting: that is, by those of the local electors who choose to attend. It is as if the parish meeting decided to appoint a permanent standing committee (responsible to it for all the work entrusted by Parliament to the local authority), and to call it the parish council.

The election of the other local councils in England is something of the same kind. But since the area of no other unit than the parish is small enough to make direct government or even direct election possible, no attempt is made to collect the voters (in district, borough or county) into a single assembly, for the purpose either of electing a council or doing any other business. Instead the same procedure is followed as that used at Parliamentary elections, namely the ballot. But though the electors never meet together, they are the body to which the local council is responsible, just as the parish council is responsible to the parish meeting. Each local authority, in other words, is brought into being by the will of a majority of those local electors who trouble to vote, and not by Parliament or any organ of the central government, though it is Parliament which allows it to be created and prescribes how its creation must take place.

This fact (and the taxing power, which will be discussed later) distinguishes a local authority from the various other kinds of local administrator, whose work is not properly called local government. The Justices of the Peace, for instance, are not elected, though their appointment by the Lord Chancellor depends, especially in the boroughs, on the recommendations of a local advisory committee. The local Revenue Officers, Pensions Officers, Post Office officials, and the like are still more definitely distinguished from local authorities proper, for

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though they are all public administrators, they are appointed by the central government and owe no responsibility to the inhabitants of the place in which they work.

The county and borough councils are not wholly chosen by direct vote of the local electors : moreover a council of any other type may co-opt persons from outside to help in the administration of particular services ; and there are some local authorities which are wholly constituted by indirect election. But the method of direct election must be examined first.

The nature of the electorate varies slightly according to the type of local authority, but these differences may be ignored. Parliament has defined the local electorate, and two principles in particular seem to underlie the definition. (i) Only those should be able to vote for a local governor who have a financial interest in local government ; but (ii) the power to influence local elections should not be proportionate to the financial interest. Consequently only those who are liable to pay rates (the local taxes) can be qualified to vote ; and no one may give more than one vote in favour of any one person seeking election as his representative, however much greater his financial interest may be than that of any other local elector.

Since rates are paid by those who occupy (even though they may not own) land or premises in the area, occupation qualifies a man or woman to become a member of the local electorate. But the rule that only ratepayers should have the vote has an exception ; for the husband of a rate-paying wife and the wife of a rate-paying husband are both qualified, although they do not in either case

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have to pay separate rates. And the principle that those who have a financial interest in local government should have the vote is contradicted by the fact that Companies which own factories or business-premises pay rates to the local authority but have no legal means of influencing the local election.

No one, however, can qualify who is a lunatic, alien, traitor, felon, or under the age of 21; and no one can vote who is not registered. A fresh registration list is made out each year by an official of the local authority.¹ At one time the initiative of the local inhabitant or the political agent determined how many of those qualified to vote appeared on the registration list; but it is now the official's duty to make the list complete. Objections however can be made to the inclusion of a particular person in the list; so that a keen political agent still keeps his eye on the list, and may considerably reduce the number of unsound voters by seasonable objections.²

The local electorate is therefore smaller than the Parliamentary electorate; for sons and daughters of the house, domestic servants, lodgers who do not provide their own furniture (those who do are considered to be "tenants" and may therefore be qualified), and many other persons who can vote for a member of Parliament, cannot vote for a local governor. This means in practice that about half the local population are qualified as local

¹ Acting under the supervision of the Registrar-General, who is a servant of the Crown with jurisdiction over the whole country.

² An agent was recently successful in having the name of a man who at the time was Prime Minister of Great Britain removed from the register of local government electors, by objecting on some technical ground.

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government electors, whereas the parliamentary electors probably number about 70%.¹ Moreover, practically every local elector pays rates and so contributes directly to the expenses of local government; but it has been estimated that only one parliamentary elector in twelve contributes directly to the expenses of national government.

The county is divided into electoral divisions, for each of which one councillor has to be elected; but most urban areas of any size are divided into Wards,² each of which is usually represented by three councillors. The election of county councillors takes place every third year, in March; and elections are also triennial in the twenty-eight metropolitan boroughs of London. In almost all other local government areas there is an election every year; but as each councillor is chosen for a period of three years, only one-third of the councillors vacate their seats each year. For instance, borough councillors elected in November 1932 keep their seats until 1935; in November 1933 only those councillors who were elected in 1930 vacate their seats; and so on.

Rural and urban district councils are elected in the same way, but their elections are in April; and if a district council obtains leave from the county council, it can hold its elections every third year, and then all the councillors retire together.

It is dangerous to make general statements about

¹ In 1929 the local electorate of Birmingham was 46% of the estimated population, in Blackburn 49%, and in Gateshead 52%. About 65% of the population of Birmingham were that year registered parliamentary electors.

² The name has come down from a remote period of history when the divisions of a shire were called hundreds, wards or wapentakes, according to the part of England in which the shire was situated.

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the interest shown by local electors in these elections; but broadly speaking more interest is taken in rural district council elections than in elections to the parish councils, still more in the county council elections, still more in elections to urban district and borough councils, and most of all in county borough council elections. Yet in at least four county boroughs there was not a single contested election in 1931;¹ and even when there is a contested election, those who do vote are seldom a larger percentage of those who can vote than fifty, and often as small as thirty.²

In the counties a still larger number of seats are usually uncontested than in the boroughs. In 1925, for example, there was no contest in forty-five out of the fifty-four electoral divisions of Leicestershire, and in forty-nine there were no contests at the 1928 election. But when an election is contested, a larger percentage of those on the register go to the poll than might be expected. In Leicestershire, for example, 50% voted in 1925, and nearly 58% in 1928.

Though it seems often to be true that the more important the authority, the keener the interest taken in its election, sometimes exactly the converse seems to happen. London (as usual) is peculiar. The London County Council, whose total expendi-

¹ In Norwich and Wolverhampton, which have a population of 100,000 each; and in Carlisle and Dudley.

² The percentage, for instance, in Newcastle was 31 in 1929; in Birmingham under 40 (where in 1871 it had been 58); in Liverpool it was 46 in 1923 (whereas in 1908 it had been 56); in Bristol 48 in 1922 (where in 1908 it had been 65); and in Leeds the figure varied in the years 1910-1929 between 48 and 59 (whereas in 1908 the percentage had been 68). All the places mentioned in this note are county boroughs.

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ture on revenue account in 1929 was over £20 million, polled only 28% of the electorate in 1931 ; and the average poll in the metropolitan borough elections that same year was no more than 33%, though their total expenditure in 1929 on revenue account was over £40 million. Mr. Bernard Shaw once said : " The bigger and more important the city, the fewer votes will secure a seat, because of the difficulty of inducing busy and fashionable people to vote at all : in fact, it is easier to poll a village to the last man than to poll 50% of the electors in a London ward." This is certainly true on some occasions. In the Urban District of Minehead, for example, when the formation of a local Rate-payers Association happened one year to arouse considerable interest in the local government election, 90% of the registered electors went to the poll.¹ But this figure was quite exceptional, and has not been repeated.

The difference between one place and another in point of interest is usually due to the varying extent to which party politics have entered into local government. Hitherto the county councils, with one or two exceptions such as County Durham, Lancashire, Glamorgan and Monmouthshire where the Socialists have held a majority of seats at various times between 1920 and 1930, have been generally speaking free from the advantages and disadvantages of party politics.² There have been

¹ According to the Clerk of the Council.

² In many counties, elections have from the first been contested on party lines between Conservatives and Liberals, but the differences between these two parties have recently become unimportant for the purposes of local government, and they have never been such as to create a system of party government within a county council.

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many causes of this : the long distances which county councillors must travel to attend meetings and the consequent expense of time and money ; the conservative tendencies of the agricultural population ; the fact that the county council is not itself a rating authority but raises its money through the agency of the district councils, so that the rate-payers are not always conscious how great a financial interest they have in the county council's administration ; and so on. Some of these causes have recently become less powerful : under the 1929 Act, for instance, a county council is able to pay the travelling expenses of its members ;¹ but the great increase in the amount of work which a county council has to do, under that same Act and many recent statutes, makes it harder than ever for a man who is dependent on wages for his living to undertake the work of county councillor. The result, certainly, of these and other such causes is that party politics play a very much less important part in county government than in the government of the boroughs, and the interest taken in county elections is proportionately less.

In areas where party politics do enter into local government the organization of the Socialists is usually more or less the same as for the purposes of national politics.² But although the growth of party politics in local government was stimulated during the last quarter of the nineteenth century by the development of local organization of both the Conservative and Liberal parties, since that time, and especially since the war, neither of those parties

¹ By 1932 few had made use of this power.

² In fact, many of the Socialist members of county councils are described officially as Political Agent, Trade Union Secretary, and so on.

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has paid much attention to local government elections. Generally speaking, then, the opposition to Socialism in local government is not organized on national lines ; and many of those members of local councils who are not Socialists either claim to have no party allegiance, or else they belong to some local organization, which may be called the Rate-payers Association, the Economy Union, the Anti-Socialists, or some such title.¹

The political issues vary from place to place, but when there is a contest, one candidate is usually content to advocate reduction of the rates and the other a development of the social services. Whether or not the local authority should embark on some trading enterprise ; whether it should employ labour directly or use the private contractor for such work as building, cleansing or printing ; what work, if any, should be expected of those able-bodied persons who receive public assistance in their own homes : such questions as these are sometimes mentioned in election addresses ; but where an election is contested with unusual keenness, it is probably concerned with a matter of purely local interest, such as the site of a new Town Hall.

Correspondence between the results of local and national elections is erratic, and varies from time to time. In Manchester, for example, in 1922 there was a narrow Conservative majority in one division at the Parliamentary election, and three Liberals were returned at the municipal election for the three wards comprised in that division. In 1923,

¹ In the London County Council, where party politics are better organized than elsewhere in England, the three parties are called Municipal Reformers, Progressives and Labour.

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there was a Liberal majority of nearly four thousand in the same Parliamentary division, but Conservatives were successful in two out of the three wards. In 1924 the Parliamentary voters returned a Conservative by a majority of more than three thousand, and three Liberals were successful in the wards.¹ On the other hand, the overwhelming defeat of the Socialists in the general election of 1931 was followed by a similar reaction in the municipal elections. In five of the metropolitan boroughs and in at least three county boroughs (Stoke-on-Trent, Derby and Birkenhead) the Socialist majority was lost; and in eighty of the boroughs the party lost 206 seats and gained only five.²

Candidates for local election are drawn from a wider field than the local electorate; for Parliament, perhaps anticipating the difficulty of inducing candidates to come forward, has not followed quite the same principles in prescribing who may stand for election as in prescribing who may vote. Not only the registered rate-payers, but anyone owning property in the area and anyone who has resided there during the previous year, may stand for election. On the other hand, there are certain disqualifications which make a person ineligible, whether he has the right to vote or not. Financial interest, it was said, is the main principle underlying the definition of a local elector, and this same principle underlies the definition of

¹ E. D. Simon, *City Council from Within*, p. 195.

² The general average of voters at these local elections seems not to have been more than 50%, though in particular cases a high percentage voted. For instance, one ward in Newcastle polled 75% of the local electorate.

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eligibility, but in a qualified form. A person who has been in receipt of public assistance (that is, relief given under powers of the poor law) ¹ during the previous year may not stand for election, although he can vote. Anyone who holds a paid office under the local authority, and anyone who is "interested" in a contract made with the council, is similarly disqualified from being a member of the council, though not from voting. This last rule is intended to prevent the more flagrant instances of jobbery, but it has many exceptions, both official and unofficial. For instance, a man may be a shareholder and managing director of a company which enters into contracts with the local authority, and yet be a member of the local council, provided only that the company pays him a salary, not a commission on profits.² Another disqualification is absence from a county council for twelve months, or from any other council for six; but here again an exception can be made for a reasonable excuse.³ The disqualifications however which in practice most effectively prevent people from seeking membership of local authorities are

¹ But relief given on account of blindness or other physical infirmity does not disqualify.

² *Lapish v. Braithwaite* [1926], A.C. 275. The Onslow Commission recommended that this type of disqualification should be abolished, and replaced by an extension of the rule that anyone having a financial interest of this kind in any particular business of the council should abstain from voting, when that matter arose either in committee or council.

³ There is nothing to prevent an ex-councillor from presenting himself time after time for re-election; and when, as frequently happens at county council elections and often at other elections, no new candidate is put forward, the retiring member is automatically re-elected, unless he objects.

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the "unofficial" disabilities of poverty and lack of leisure.

Though there is no such thing as the typical member of a local council, and it would perhaps therefore be better to say nothing in general terms about the kind of person found in the position of local governor, it may be mentioned that most county councils do in fact include (as they have always done) a fair sprinkling of farmers, business men (who represent the urban areas), and such people as retired army officers and ex-schoolmasters who are technically described as gentlemen. With the few exceptions mentioned before, county councils include very few representatives of the wage-earners, and practically no women.¹ In the boroughs, on the other hand, the number of "working-men" increases yearly (though the classes of merchant and shopkeeper continue to be particularly well represented), and an increasing proportion of councillors are women. Of the professional classes, solicitors, doctors and ex-schoolmasters seem to take part in local government more frequently than others; and ministers of religion are often to be found on councils of one type or another.

In considering the kind of person who engages in local government, the fact is worth mentioning that many members of a county council are also members of a district council at the same time. It is difficult to discover how generally this overlapping occurs, or how desirable its occurrence may

¹ In 1926, 17 of the 62 county councils contained no woman. The same year, 50% of the urban district councils had none either. There were then 3,313 women engaged in local government as elected members: a proportion of one woman to nine men; 70% of them were members of Boards of Guardians.

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be ; but as the business of a county council increases in volume, the less possible does it become for a person, who is a councillor both for the county and for a district, to give much time to the work of the district council ; and the latter is almost certain to be neglected. The county council, too, may hesitate to do the work, say, of revising district boundaries, as drastically as in the interests of the whole county it should, if county councillors remember too loyally the interests of the particular district council of which they happen to be members. On the other hand, since there are several types of local authority having jurisdiction within the county, it is clearly desirable that there should be as much co-operation as possible between them ; and this ideal can perhaps only be realized if the same persons hold office as members of more than one local authority. Certainly the "Onslow" Commission¹ seems to have taken that view ; and in Scotland those members of the county council who represent the boroughs are elected by the borough *councils*, not by the local electorate, while the other county councillors (representing constituencies outside the boroughs) are ex-officio members of the district councils, so that the principle of overlapping membership is necessarily followed in every case.

Two-thirds of the seats on each borough and county council are occupied by councillors elected in this way by the direct vote of the local electors.²

¹ The Royal Commission on Local Government, under the chairmanship of the Earl of Onslow, conducted an extensive enquiry into English local government from 1923 to 1930, and issued three reports (see Bibliography).

² The size of borough councils varied from 9 to 151 in 1929.

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But the aldermen, who make up the rest of each council, are indirectly elected. They remain in office for periods of six years, and every third year half of them vacate their seats. After the triennial election to a county council, the elected councillors proceed at once to the election of aldermen to fill the vacant seats, but since the election of borough councillors is annual, borough aldermen have only to be elected after every third election of councillors.

A councillor, and anyone qualified for election as councillor, may be elected, or re-elected, alderman ; and various principles are followed in making these elections. Where party politics are important in a council, the aldermen are usually elected either at the dictation of the party which has a majority or by arrangement between the party leaders, so that the distribution of seats on the aldermanic bench roughly corresponds to the proportional strength of parties among the councillors. Where there are no parties, a group of experienced members of the council is often chosen as a Selection Committee, and its recommendations are probably accepted ; but it is always possible for any member of the council to nominate some person for election as alderman, and if the proposal is seconded by another member, that person may be elected by a simple majority of those voting. Normally the aldermen are elected from councillors of long standing who seem to have earned the distinction ; but sometimes, especially in counties, a distinguished person is made an alderman who has never been elected as councillor : a peer of the realm, for instance.

The office of alderman, which has survived from very early times,¹ was nearly abolished in 1835.

¹ See index to Webbs' *English Local Government*, vol. iii.

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The Municipal Corporation Bill of that year did not propose to find room for aldermen in the reformed corporations, but the House of Lords insisted that the office should continue; and this precedent was followed in the Act of 1888 which created county councils. Various principles underlie this form of indirect election: first, that the local council should include certain members not chosen primarily to reflect the will of the local electors but simply on the grounds of being the best governors available; and secondly, that the administration should be as stable and continuous as possible. These principles, which also underlie the rule that councillors are elected for three years each, and can be made to seek re-election only at regular intervals, distinguish local councils from Parliament. For aldermen do not in any sense correspond to the House of Lords: once elected they are ordinary members of the council precisely as the elected councillors are; they never officially deliberate apart from the rest of the council,¹ and frequently belong to a committee whose chairman is a councillor.

They certainly tend to make the council less sensitive to a change in local opinion than a wholly elected body might be, for once elected they hold office for the full six years, whatever change may come over the rest of the council. But they are not necessarily a conservative element in the council, and it does not follow that their existence always tends to prevent a sudden change in the character of the council from occurring. For when a party, which has been hitherto in a minority on the council and has not been able to secure the

¹ The Court of Aldermen of the City of London is the one exception.

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election of a proportionate number of aldermen,¹ finds itself at last in a majority, it probably secures that at the next election of aldermen no one is chosen who does not belong to the party. Thus an alteration in local opinion, just sufficient to alter the balance of power among those who can vote at an election of aldermen, may cause a considerable change in the political character of the council.

There are no aldermen in councils of any type except the county and the borough. But the councils of urban and rural districts can enlist the help of anyone they like in the administration of particular services. Such a person becomes a member not of the council, but of some committee; and as a co-opted member, takes part in that committee's work as if he were a councillor; so that co-opted members in a sense correspond to aldermen. But co-option is also used, and sometimes by statute it must be used, by county and borough councils for the administration of certain services, though these councils have no general power to co-opt, for the reason (it would seem) that in their aldermen they already possess a co-optive element.

This method of adding to committees of a council from outside has roughly three advantages and as many disadvantages. It enables a local authority to make use of experts for particular sides of its work: artists, for instance, who would never seek election as ordinary members of a council, may consent to be co-opted on the committee which has charge of an art gallery or museum. It can pro-

¹ In the county borough of South Shields, to take one instance at random, the relative strength of the Socialists among elected councillors was twenty-one to twenty-three in 1929, but only three of the fifteen aldermen were Socialists.

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vide a link between the council and voluntary organizations engaged in work which is akin to the council's, such as maternity and child welfare; and it helps to bridge the gap in a transitional period when a body which formerly administered a service has been recently superseded: as, for instance, when the Guardians of the Poor gave way to the councils of counties and county boroughs, under the 1929 Act. For the new authority can give those who had previously been doing the work an opportunity of continuing as co-opted members to take part in the administration; and this may do something to disarm the opposition of those who are deprived of their office.

On the other hand, a co-opted person may forget that the council has any other responsibility than that falling on the particular committee of which he is a member, so that committees which include many co-opted members may fail to consider the wider implications of a particular policy; and since co-opted members are not responsible to a constituency of rate-payers, they are the more likely to consider administrative questions from a one-sided point of view. This criticism is especially relevant when persons are co-opted, for instance on the allotments committee, with the express purpose of representing the interest of allotment-holders, or on the education committee as representatives of the teachers; though it is precisely this kind of person who can be most useful to the committee on all other matters than finance. Secondly, a great deal of time is wasted when committees are persuaded by co-opted members to make recommendations to the council which (as elected members know) the council will not accept, for the whole question has then to be reconsidered by the

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committee. And thirdly, it may happen that people, who are ready to take part in local government, are tempted to avoid the responsibility of full membership of the local authority, by the knowledge that they can serve as co-opted members without undergoing the embarrassment of an election. For these and other less worthy reasons, the co-optive principle is not popular with the ordinary member of a council.

The membership of one committee, the agricultural committee of a county council, is not complete until certain nominations have been made by a central department, the Ministry of Agriculture, but this is the only committee of a primary local authority with whose actual membership a central department has anything to do. It is an anomaly surviving from a time when the central government had undertaken so heavy a financial responsibility for work entrusted to the care of local authorities, that it reasonably sought to retain some special control over the administration. These exceptional conditions have long since disappeared, and the Onslow Commission recommended that the Ministry's special power should now be taken away.

To complete the council a chairman, of either sex, who in boroughs will be called the Mayor and in some special cases the Lord Mayor, must be chosen each year from within or without the elected body. The Mayor may be paid a salary, and this distinguishes him not only from the chairmen of most ¹ other local authorities, but also from all other members of every type of local authority in England. He is the one exception to the rule

¹ The chairman of an urban district council may be paid a salary, but no other chairman.

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that the local governors are unpaid ; and the exception is eminently reasonable, for the mayor is not only chairman of the council but also representative of the borough, and in that capacity he has a great variety of duties which involve him in considerable expense of money as well as time. Some boroughs contrive to spend money on entertaining distinguished visitors, and on similar activities for which they have no specific statutory authority, by paying the Mayor an allowance for expenses in addition to his salary. In this way a city, for example, which wishes to encourage its ship-building industry, can show hospitality to the ships of foreign governments which happen to be visiting the port.¹

The size of a council when its membership is finally completed by the election of a chairman varies, as it should, with the size of the area, but also on other less rational grounds. The parish council depends for its size on the decision of the county council, but it cannot have more than fifteen or less than five members. The size of rural and urban district councils is also determined by the county, and varies according to the county's absolute discretion. The size of county councils was prescribed by the Act of 1888 which created them, but each of them has a duty under the 1929 Act of making proposals to the Secretary of State for any necessary correction in the size of the council and in the boundaries of electoral divisions. Bedfordshire provides an interesting example of the effort which the council of a predominantly

¹ But in the case of *Attorney-General v. Corporation of Cardiff*, [1894] 2 Ch. 337, it was held that a salary might not be paid to the Mayor for the purpose of illegal activities.

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agricultural county can make to give weight to the interests of urban areas, by arrangement of the county electoral divisions. According to the arrangement existing in 1924, the borough of Luton was allowed to elect sixteen of the sixty-six county councillors, and the borough of Bedford eleven, while six of the twenty-two county aldermen represented Luton and four Bedford. These two urban areas were thus represented on the county council by thirty-seven of the eighty-eight members.¹

Indirect election, which is used for completing the membership of these various councils, is also the way in which the whole of some other local authorities are constituted. The Standing Joint Committee, for example, is appointed partly by the county council, partly by the Justices of the Peace in Quarter Sessions. Port Sanitary Authorities and Joint Boards for sewage disposal, water supply, hospitals, town planning and various other purposes are appointed by similar indirect means.² The governing bodies of particular schools, in whose administration more than one local authority are interested, come into being in rather the same way. There are also assessment committees, drainage committees and the like, which are similarly constituted by the appointment of members in various proportions by the different local councils having authority in the area. Catchment Boards, for instance, have to be set up under

¹ The population of Bedfordshire was then about 206,000 ; that of Luton 57,000, and that of Bedford 40,000.

² The Port of London authority and the Thames Conservancy Board are two important instances of the operation of this principle. In 1930, there were 223 joint boards or committees for hospitals, 48 for water, 45 for sewerage, 8 for electricity, and 6 for gas.

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the Land Drainage Act of 1930 in various areas defined in accordance with local geography ; and of the thirty-one members who are to constitute a catchment board of the largest type, one must be nominated by the Minister of Health, twenty appointed by the councils of counties and county boroughs, and ten by the Minister on the advice of other local authorities in the area. The *ad hoc* authorities which were commonly created by nineteenth-century legislation had to be separately elected in each case, with the result that the political energy of the local electorate was dissipated in a succession of minor elections. An *ad hoc* authority which is elected indirectly, like the catchment board, does not add to the duties of the electorate, and moreover has none of the disadvantages of an independent body, which may be out of touch with local opinion and unrelated to the other authorities of the district.

CHAPTER V

COMMITTEES

It has already been said that the work for which local authorities are elected is to govern : that is, to provide in each place the particular services which Parliament has decided that local authorities may or must provide ; and there is no intervening authority between them and the public. Clearly no council larger than that of a parish can do the whole of this work of government as a single body. Though there are certain functions which are performed by the council as a whole (and these will be considered later), the greater part of the work is done by committees : that is, by groups into which the council is split up for particular purposes.

Two principles are usually followed in effecting this division of labour : some committees are appointed to administer single services—education, electricity supply, and so on ; others are entrusted with some particular part, say the financial aspect, of several different services. The first may be called the principle of vertical division, and the second that of horizontal division.

Several committees have to be appointed by statute on the vertical principle. A county council, for instance, has to appoint committees for education, child welfare, lunatics and mental defectives, public assistance, public health and

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housing, and agriculture, though one and the same committee may be made to serve more than one statutory purpose. Borough councils are less regulated in this respect, but a borough that is responsible for its own police is bound to appoint a watch committee; one that has responsibility for education, an education committee; and all county boroughs must appoint committees for education, public assistance, and public health. Councils would be almost certain to appoint committees for all these purposes on their own initiative, so that there is little hardship in this form of Parliamentary dictation; but it is significant that local authorities should not be allowed to arrange even their own system of committees completely.

Every council however is left with a considerable amount of work which it is free to divide as it likes among committees; nor does the use which councils make of this opportunity seem always as scientific as it might be. One danger (among others) is seldom avoided: a single committee is often given a collection of heterogeneous services to provide, which require the help of more than one type of paid officer, and the committee then has members of more than one department of the council's permanent staff to control. Unless a council reviews its committee-system as a whole from time to time, many committees are likely to acquire functions outside their main concern, which would be better performed if there were a general re-distribution of labour. A committee, for instance, whose original function is house-building, begins to do the work of letting the houses when they are built, and so comes into relation, perhaps, with officials in the Estates Surveyor's

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department, instead of working only through the Engineer's department : the activity of this committee then overlaps that of another, say the Property and Estates ; there is waste of time and money through lack of co-ordination, and the officials of one department have to serve many masters.

When some new piece of work is given to a local authority—for instance, the administration of the poor law—the council may be tempted to set up a new committee and make it responsible for the transferred service, without disturbing the existing committees at all. It is in fact one of the advantages of the committee-system that this can be done. But it does not follow that such an arrangement is the best possible ; for often the new work is akin to some service which is already being provided by the council. If it clearly falls within the sphere of one committee and no other, then probably it can be handed over to that committee intact : for instance, in 1918 when the Maternity and Child Welfare Act was passed, local authorities on whom this work fell for the first time were able to hand over the new responsibility to their public health committees, which then appointed sub-committees for maternity and child welfare. But when the new responsibility is for such work as poor law administration, which is akin to the functions of several existing committees, then, if the temptation to hand over the whole responsibility to a special committee is resisted, the new work must be split up and distributed.

When poor law administration was transferred to councils of counties and county boroughs in 1929, most of the county councils preferred the simple course of giving to a new public assistance

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committee all functions which the Guardians had previously performed. By 1931, a few had taken steps to make the "blind persons" and "education" committees responsible for those of the destitute who are respectively blind or of an age to be educated, but hardly any other attempts had been made to break up the poor law. County boroughs on the other hand had been more ambitious. Twenty-four, within two years of receiving poor law powers, had made their public health committees responsible for all appropriate cases, whether destitute or not; thirty had similarly unified their maternity and child welfare service; forty-one had done the same for education; and so on. This action of local authorities in adapting their committee systems to the new work of public assistance has been dwelt on at some length, because it helps to show how councils act upon the principle of a vertical division of labour in arranging their committees.

But if no other principle were followed, the council would simply break into a number of separate administrative departments, and would find it difficult to co-ordinate one part of its work with another. There are certain aspects of administration (such as finance, the purchase of stores, the appointment of officials and the payment of wages) which are common to all vertical divisions of local government; and every council therefore appoints one or two committees on the horizontal principle. Finance committees provide the best example. County councils *must* appoint one, and almost all the other local authorities in fact do the same. This committee is concerned with every part of the council's work (roads, public assistance, and so on), but with only one aspect of each service.

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It is worth noticing in some detail a few of the functions which the finance committee of a large county borough has to perform; for in the work of many local authorities this committee plays the most important part of all, and its rather intricate relation to the other committees and the co-ordinating influence which it exercises over the various departments can best be understood by an illustration. In Birmingham, no money which the several committees are authorized to spend can be actually paid out except by an order on the city treasurer (who is a whole-time paid official), and this order must be signed by three members of the finance committee. Secondly, this committee has to negotiate all loans which the council authorizes for the benefit of any committee, and to recommend an order of priority in which works involving capital expenditure should be begun. Thirdly, an annual statement of the year's accounts must be made to the council, and an estimate of income and expenditure for the next financial year. Before submitting this estimate, the committee must consult with the authorized representatives of all "spending" committees on the question of the rate which will have to be levied in the coming year, in order to meet the estimated expenditure; throughout the year, too, the finance committee receives from other committees full particulars of any scheme involving expenditure which has not already been expressly sanctioned by the council, and must report their decision to the committee concerned. Fourthly, this committee does the work of insuring all the property of the corporation, whatever committee may be in charge of that property. It manages the superannuation scheme for the

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officials of every department ; it also has charge of the stationery department, and contracts for all the printing required by any department of the council.

In some councils a finance consultative committee (consisting of the finance committee and the chairmen of other important committees) is in a position of even greater influence. In Sheffield, for instance, this committee meets each year before the estimates of the several committees have been prepared, "with a view to fixing the amount of city rate from time to time and its apportionment amongst the various spending committees." Often this work falls on the ordinary finance committee of a council as one of its normal functions ; but in some councils the committees are too jealous of one another to allow the finance committee such pre-eminence among them, and a special estimate advisory committee has then to be appointed which is quite independent of the finance committee.

Apart from the appointment of a finance committee, there is no uniformity in the use which local authorities make of the horizontal principle. Sometimes, as in Leeds, there is an Industrial Conditions Committee, or, as in Birmingham, a Salaries, Wages and Labour Committee, which exists for the purposes of "standardizing conditions of service of employees ; of considering the effect which any proposed alteration of wages or conditions of labour by one committee might have on other departments ; of acting as a Board of Arbitration to settle disputes which may arise between committees and their employees, . . . and of assisting in the transference of employees from one department to another whenever this

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cannot be more easily effected through the Labour Exchange and Trade Unions.”¹

Most councils appoint a general purposes committee, which often has two distinguishable kinds of function. First, it has a number of the council's duties which happen to fall outside the sphere of any other committee: a municipal aerodrome, perhaps, or the publication of further volumes of the city records. And secondly, on the horizontal principle, it may have, as in Birmingham, to “co-ordinate the purchase of all goods and stores required by the various departments of the corporation which are common to more than one department”; or, as in Leicester, “to consider all matters which it may think should be made the subject of local legislation”; and so on. The Birmingham general purposes committee consists almost entirely of chairmen and vice-chairmen of other committees and is therefore peculiarly well suited to the work of watching all the council's activities and detecting faults in its organization; and since it also acts as a committee of selection, for the allocation of aldermen and councillors on the various committees, it is intimately related to all committees from the moment of their appointment.²

¹ Some councils, such as Hull, appoint for similar purposes a “Whitley Council,” including in its membership representatives of the council, the officials and the other employees. Elsewhere (in Oxford, for example) a Joint Consultative Board is set up. In 1932, 7 county councils, 52 borough councils and 11 other local authorities had set up joint committees of this kind. There were also Provincial Whitley Councils in London and two other districts.

² In other councils certain of these co-ordinating functions are given to separate committees: for instance,

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It is fairly obvious that some steps must be taken to prevent overlapping and friction among committees ; otherwise the same strip of highway will be dug up one day by the public health committee for the laying of a drain, again a month later by the highway committee for improving the surface, then by the electricity committee, and finally by the tramways committee. Though sometimes a committee of chairmen or a general purposes committee can provide against this kind of danger, the spending committees themselves are often in a better position than any other body for securing co-operation. Two committees which have similar work to do—say, the housing and the property and estates committees—often have certain members in common, who can be used as links between the two departments. Or else a joint sub-committee can be appointed for this purpose : in Birmingham, for instance, three members of the electricity committee and three of the gas committee form the Gas and Electricity Joint Sub-Committee.

A third type of committee, appointed on neither of the principles mentioned above, is the Special Committee, which a local authority often sets up to deal with a particular problem. Most county councils appointed Local Government Act Committees to consider the various difficulties arising from the Act of 1929 ; and sometimes a special committee is constituted jointly by two author-

there is a separate Central Purchasing Committee at Hull, and a Contracts Committee at Newcastle-on-Tyne, which enable their respective councils to benefit from the fact that goods can be purchased in bulk on more favourable terms than the various committees could obtain independently.

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ities: for instance, the county boroughs of Gateshead and Newcastle set up a special committee to consider proposals for the amalgamation of the boroughs.

Most of the instances quoted so far in this chapter are taken from the practice of county borough councils. Since each local authority is free (except when a committee is statutory) to arrange its own committee-system exactly as it chooses, no system can safely be called typical. But what has been said of the vertical principle applies to almost all local authorities; and what has been said of the horizontal principle can be taken as generally true where Finance and General Purposes are concerned. Central purchasing, however, and similar horizontal functions are not given consideration by many authorities outside the large boroughs.¹

The relation of a committee to the council which appointed it, and the extent of its powers vary within wide limits from place to place. With certain important exceptions (which will be mentioned later) a council is free to determine how much power shall be delegated to each committee; and it usually incorporates these decisions in the Standing Orders of the council, or in a separate set of Instructions to Committees. Sometimes an instruction mentions the various Acts of Parliament whose administration is delegated, in such terms as these: "To direct and superintend the carrying out of the provisions of the Markets and Fairs (Weighing of Cattle) Acts 1887 to 1926"; sometimes the delegation is more general: "To carry into effect the provisions of the Libraries Acts." The substance of these instructions naturally varies

¹ Some county councils, for instance the West Riding of Yorkshire, are exceptions to this rule.

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from place to place, and one authority differs from another in practice even more widely than a comparison of the written evidence would suggest. However, there are certain limitations to the power of a committee which apply generally to most of the local authorities.

(a) No council has legal authority to delegate to any committee the power of levying a rate or raising a loan, so that all committees are dependent on the council for the money they wish to spend. But as the council would gain little from the appointment of committees if its leave had to be obtained each time a committee wished to do anything which cost money, it allows its committees to incur expenditure from day to day, provided that the estimates are not exceeded and that if a committee wishes to begin some expensive piece of work, even one for which provision has been made in the estimate, it first asks for the special approval of the council. There is evidently room here for wide divergence of practice: one council will insist more firmly than another that its committees keep within the estimates, and that particular items of expenditure are not incurred without its specific sanction. Besides, the freedom of spending committees is largely dependent on the power of the finance committee, which of course varies from place to place. The law, therefore, which prevents any council from delegating to a committee the power of raising money does not secure uniformity of practice among local authorities or prevent committees here and there from enjoying a limited financial autonomy.

A special attempt was made by Parliament to prevent county councils from delegating this

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power to committees ; for the 1888 Act declares : " Any costs debt or liability exceeding £50 shall not be incurred except upon a resolution of the Council passed on an estimate submitted by the Finance Committee." But county councils cannot (any more than other councils) be compelled to pass *separate* resolutions about each item of expenditure, and it is interesting to see what the practice of some county councils has become in this respect. Once a year each spending committee submits its estimates for the next twelve months to the finance committee, which examines them all together, and submits them, in a revised form if necessary, to the council. This general framework is filled in at the quarterly meetings of the council during the year, when the finance committee reports that it has considered the estimates of the spending departments for the next quarter and recommends the council " to authorize the county treasurer to pay accounts and claims up to the amount of such estimates " ¹ ; and after each quarterly meeting the various committees are free to spend the amount specified, without having to obtain the approval of the finance committee or even that of the county treasurer, who simply pays the accounts and claims presented, up to the figure passed by the council. It seems clear, then, that the attempt of Parliament in the 1888 Act to prevent county councils from delegating their financial powers has not invariably succeeded ; for

¹ In one report of this kind the total figure was nearly £900,000, including some £110,000 on capital account and various items on revenue account, such as " Public Assistance Committee, £10,000 " ; moreover, a note added " And any further amount necessary to adjust balance at the close of financial year."

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in actual fact a borough council is likely to retain, with the help of a finance committee, meeting as often as once a fortnight, a very much closer control over the expenditure of its various departments than a county council exercises, either at its quarterly meetings or by means of its finance committee, which only meets perhaps six times in the year.

(b) Another general limitation prevents a committee from affixing the seal of the corporation to any document without the express approval of the council; and this makes it impossible for a committee to sell or buy property, or to carry through any piece of business when the other party to the transaction is not content with a mere promise but wishes a formal contract to be signed and sealed. On many occasions this may not cause any inconvenience, for contractors often are too anxious to secure the goodwill of a committee to risk the delay which would follow their demand for a sealed agreement. But serious trouble is occasionally caused. For instance, negotiations with a private Omnibus Company, which the tramways committee of a borough council wishes to buy up, may require secrecy if they are to be successful, and they may be wrecked, if the committee has to make a public statement, asking the council to sanction the use of the Corporation Seal, before the bargain can finally be struck.

(c) There are various other limitations generally imposed upon the freedom of committees. A committee may appoint whatever sub-committees it thinks useful, but it may not delegate to them any of the powers delegated to it by the council. In other words, a sub-committee may only "act"

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if the council has given it express authority¹; otherwise the function of a sub-committee is only to make recommendations. However it happens sometimes that a council recognizes a sub-committee (for maternity and child welfare, say) as a standing sub-committee,² and such a body may act as if it were a committee, reporting directly to the council. Again, a committee is often allowed by the council to appoint officials to the minor posts in the department with which it is concerned; but the higher officials can be appointed only by the council,³ and no new post can ever be created without the council's permission, which in practice means the consent of the finance committee.

(d) But apart from all these particular limitations, a committee is usually bound by various general regulations of the council which prevent it from ever becoming a free agent. First, it must keep minutes of its meetings: an account, that is to say, of what happens in committee must be duly entered in a book, which is available whenever the council meets; so that any member can delve into the minute-books, even of those committees to which he does not belong, and at the proper time complain, if he thinks fit, of the proceedings of any committee. This, it would seem, should effectively restrain a committee from doing

¹ This may take the form of a general charge, *e.g.* "to administer the by-laws for the employment and attendance of school-children."

² In Blackburn, for instance, the title Standing Sub-Committee is given to bodies which in other places would be simply called committees.

³ But there is, in theory, nothing to prevent an education committee (say), which possesses delegated powers, from appointing its head-official as easily as its teachers.

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anything of which it thinks the council might disapprove. But as the committee is itself the judge of what should be duly entered in the minute book, and what omitted, it has only to instruct the clerk not to mention a particular matter, or if mention has been made, to erase it before the minutes are signed as correct, and that matter need never be known outside the committee-room.¹ On the other hand, it is usually possible for a member of the council to attend meetings of any committee, though unless he is a member of the committee he may not vote. But this right is seldom claimed, and a committee need hardly ever fear intrusion from the casual councillor.²

The final limitation on the autonomy of committees is the report of their proceedings which each must make to the council. These reports are the strongest bond between council and committees—unless the financial chain of estimates and finance committee be thought stronger still. All committees report their proceedings, and yet there is as great variety between one authority and another in the extent to which these reports subordinate committees to the council, as in the matter of financial control. This variety is due partly to differences in the number of reports

¹ But of course no self-respecting official would accept a committee's instruction to make an incorrect minute, without reporting to the chairman of the council.

² The meetings of an education committee to which powers have been delegated must (by statute) be open to the public ; some councils have applied this rule to public assistance committees too ; and others (Hull, for instance) admit the press to all committee meetings. But by the simple expedient of resolving itself into a sub-committee, any committee can exclude the public, and the usual effect of a rule of this kind is that the more important work of committees is done by sub-committees.

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which the committees make in the course of a year; partly to the varying length and content of the reports, and partly to the different degrees of care with which reports are examined by the council. A county council, for instance, not only lets the committees go their own way during the three months between council meetings, but even at the quarterly meetings it is usually prevented from any detailed examination of the reports by pressure of time.

The reports which committees make can be roughly classified under two heads. Proper reports are simply statements of what the committee has been doing, made for the sake of information, but not asking the council for its approval. When this kind of report is submitted, members of the council can exercise their ingenuity in asking questions and criticizing any point that displeases them; but as no motion is submitted for the approval of the report and as the acts reported have usually been already performed, no one can effectively interfere.

The second kind is a recommendation, and in presenting it to the council the chairman of the committee submits a motion "that it be approved." Anyone can then take exception to the whole or any part of it, and move an amendment, or suggest that it be rejected, or referred back to the committee for reconsideration. If a proposal of this interfering kind is approved by a majority of the council, the committee can do nothing but obey; and in consequence each committee learns by experience that there are certain recommendations of which the council will approve, and others of which it will not. Quite apart, then, from the occasions on which a council exercises its power and rejects

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or refers back some part of a committee's report, the mere existence of this power compels each committee to remember the council when it lays its plans.

Two cardinal questions remain : where must a committee draw the line between report and recommendation, and which of its proceedings can a committee safely refrain from mentioning at all ? There are certain legal limits (for instance the financial), but neither question can be answered in general terms. In Hull, for instance, almost everything said at committee meetings is taken down in shorthand and then appears in the printed reports, which consequently cover some four hundred pages each month. This is expensive, and the size of the monthly volume discourages most members of council from attempting to read it ; accordingly, many matters of importance escape unnoticed, but any member who happens to be interested in business transacted by a committee to which he does not belong, can discover what he wants from the committee's report, and raise the question in council. At Leeds, on the other hand, the reports are brief and mention only matters which the committee thinks important.¹ This latter custom makes it possible for a committee to omit deliberately from its report a matter with which it suspects the council may wish to interfere, until negotiations have reached a point at which the council, when it is at last informed, may find its hands are already tied. But for many reasons a committee is unlikely to attempt such tactics, or to be successful if it does. It is usually laid down (for example) in Standing

¹ At Sheffield, the monthly reports cover only some ninety pages, as a rule, and at Blackburn only thirty.

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Orders that when a motion has been submitted for the approval of a committee's report, "it shall be competent for any member to call the attention of the council to, and fully discuss, any subject-matter of business *whether referred to in such report or not*, which may at the time be in the department of, or referred to, such committee." No doubt it is true that if a committee has kept its intentions to itself, no member of the council who is not on that committee is in a position to ask questions sufficiently embarrassing to compel it to divulge its plans; but this Standing Order makes it unsafe for a committee to try and cut itself loose from an attentive council.

So much can be said in general terms of the relation in which committees stand to their council. But apart from the mass of qualifications which should be made to cover the peculiarities of local practice, there are certain kinds of committees which have exceptional powers wherever they are found.

(a) A committee which is responsible for the local police is so independent of the body which appoints it that it resembles a separate local authority rather than a committee in the ordinary sense. The watch committee reports to the borough council, but does not need the council's approval, either before or after taking action. It submits a yearly estimate of the expenditure it intends to incur, but the council cannot question this estimate and is bound by statute to raise whatever money the watch committee requires. A standing joint committee has similar power to make the county council pay, and similar freedom in everything connected with the police. On the other hand, a committee of either type often has other powers delegated to it by the

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council, in addition to the police powers which by statute must be given ; and in doing this other work it can behave with no greater freedom than an ordinary committee.

(b) Secondly, the education committee of a council is almost invariably more independent than any committee other than the watch or standing joint. Under the Education Act of 1902 any council having responsibility for education was bound to appoint an education committee and to draw up a scheme (which needed the Board of Education's approval), showing how the service was to be administered. The consequence is that an education committee acts almost as a separate authority, managing a department of its own, reporting comparatively seldom, and only dependent on the council when the annual estimates are in debate, or when a specially important item of expenditure is to be incurred. Indeed, though a council need not delegate its powers to an education committee, it is bound by statute to refer all educational matters to that committee, and to consider the committee's report before acting, except in an emergency.

Some other committees work within the framework of a scheme which the council lays down once for all : the public assistance committee of county and county borough councils, and agricultural committees (which all county councils must appoint) are of this kind ; and there is a tendency for all such committees to become relatively independent of the council which appoints them. That is one reason why local authorities resent the creation of statutory committees by Parliament ; for they fear that any committee which has a department of its own and a special

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scheme whereby the council's powers have permanently been delegated, will come to consider itself a separate authority, and so prevent the council from considering its various activities as a whole.

(c) Thirdly, the committees of a county council are likely to be more autonomous than those of other authorities. This may seem remarkable, considering the special provision of the 1888 Act mentioned above, which seeks to prevent a county committee from incurring any item of expenditure over £50 without special leave of the council. But another section of the same act lays down that, although committees of a county council must report their proceedings, they are *not* required, as are the committees of borough councils,¹ to submit their acts and proceedings to the council for approval; so that a county council is free to delegate executive power to any of its committees. There is good reason that this should be so: since members have to travel some distance to attend meetings, neither the council nor committees of a county can meet as often as those of the other local authorities, and the administration could hardly be carried on at all, if no business could be transacted until a committee's recommendation had been approved at one of the quarterly meetings of council.

(d) Another type of committee which usually enjoys a large amount of freedom is the trading committee to which administration of such a service as electricity, gas, or water has been entrusted by the borough council. These committees are engaged on work which in several respects requires a different kind of management from that used

¹ By the Municipal Corporations Act, 1882, section 22.

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in the administration of public health and education. On the one hand, they have to compete with actual or potential rivals: a private gas company may be competing with municipal electricity, or a private omnibus company with the municipal trams. If the trading committee is to succeed, it cannot afford to proceed either more slowly or more publicly than its competitors: in other words, it must be allowed to decide questions of policy as they arise from day to day without reference to the council, and only the larger issues should have to wait for public determination at a council-meeting. From another point of view there is no reason why the routine of supplying gas or electricity should be constantly interrupted by appeals to public opinion; for there is little doubt that what the citizens want is an efficient supply of the commodity at the cheapest possible price. There are large questions of policy which the council must decide: shall the scale of prices charged to the consumer be such as to yield a profit on the whole undertaking, over and above the proper charges for depreciation and development? If so, shall this profit be used to relieve the rate-payer or for some special expenditure which the city would not otherwise be able to incur? And what wages and conditions of employment should the city offer? But once these questions of policy have been decided, there seems to be little reason why the whole body of councillors should frequently be asked to express its opinion as questions of detail arise from day to day in the administration of the enterprise. Moreover, members of a trading committee are likely to be better judges than the whole council on technical questions, for they gain from their work on the

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committee some special knowledge of the subject. In practice many councils do not recognize these facts, but attempt to treat this type of committee like any other. There is therefore much variety in the power of trading committees ; but generally speaking they come in the end to a position of relative independence.

(e) Finally, certain borough councils have obtained special power, by a local act, of delegating executive power to committees. Newcastle-on-Tyne, for instance, in 1882 (the very year in which the Municipal Corporations Act was passed, insisting that all committees must report their proceedings to the council for approval), received certain privileges from Parliament. One section of the local act runs as follows : " The Council may from time to time appoint Committees of its members, and may delegate to each such Committee such of the powers and duties of the Corporation as the Council think fit, and the acts and proceedings of every such Committee within the limits of such delegation shall be deemed the acts and proceedings of the Council . . . Provided that in no case shall a Committee be authorized to borrow money, or to make any rate." Accordingly no committee of the council is obliged to wait for the council's approval of any piece of business (except the sealing of a contract or the raising of money), which falls within the scope of its delegated powers. The consequence is that in Newcastle (or in Birmingham, which obtained by local Act in 1883 a similar power of delegation, or in any borough which has the same privilege) the council can give its committees as much freedom as any county council can give under the ordinary law.

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Enough has now been said to show the danger of generalization concerning the power of committees in the English local government system. The general law is not the same for all types of authority; exceptions to the general law are introduced here and there by local Acts, and the practice of councils in using their powers of delegation is very far from uniform, especially in the extent to which they retain financial control. Before considering how committees and council actually do business, it will be well to notice the number and size and constitution of these committees, now that the principles of their appointment and power have been discussed.

Here again there is great variety. In 1929 few county councils or large borough councils appointed more than thirty or less than twenty committees each¹; but the number of committees which a council appoints is not in itself significant, for the number of sub-committees, and the extent to which a committee's business is really transacted at sub-committee meetings, must also be taken into consideration. Practically all committees appoint an audit sub-committee, which has to inspect the bills and other financial accounts before the committee recommends their payment; and the other sub-committees are appointed, like committees, on either the vertical or horizontal principle. Thus an education committee usually appoints higher education and elementary education sub-committees, and others for finance,

¹ There were twenty-one at Birmingham and twenty-two in the county of Surrey; but Somerset county council had only thirteen. Some of these are called Standing Committees, but the title does not necessarily imply an important distinction.

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school-attendance, play-centres, and one perhaps for general purposes. But there is no upper or lower limit to the number which a committee may appoint.

The size of committees is more important than their number. Statutory committees have to be of a certain size, and are often exceptionally large : the education, public assistance, and agricultural committees often have as many as thirty-six members each. Otherwise the councils are free to decide ; and they usually lay down in Standing Orders that no committee shall have more than a certain number of members. Birmingham limits the size of all but five of its committees to eleven ; Sheffield, Leeds and Hull follow the same practice. On the other hand, boroughs such as Manchester and Blackburn have committees of more than twenty members ; and most county committees are about that size. It also may happen (as in Oxford) that a council appoints a general purposes or public health committee which consists of the whole council.

In appointing committees it is always arranged that every member of the council shall be a member of at least one ; and some councils have a Standing Order limiting the number of committees on which any one person may serve.¹ The amount of time which a person undertakes to spend on local government depends largely on the number of committees on which he serves. In 1928 (to take an example at random) the largest number of meetings (including those of councils and committees) which anyone in the Newcastle-on-Tyne

¹ In Oxford no one may be on more than five standing committees, in addition to the two committees of which everyone is automatically a member.

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council undertook to attend was 424, and the corresponding figure in Sheffield was under 300 ; but these figures take no account of sub-committee meetings of which there were some 750 that year in Newcastle¹ ; and since the average length of a meeting cannot be calculated, and as some members appear in the committee-room only long enough to be recorded as present, there is no way of discovering the average length of time which councillors actually give to the work of local government.

County committees never meet more often than once a month, sometimes only once a quarter, and the attendance of county councillors is on the whole spasmodic, in comparison with that of borough councillors. Perhaps some dozen members of each county council give a great deal of time to local government : one man is sometimes found to be at the same time chairman of the county council and chairman of the education and finance committees, and to be giving the greater part of his time to the work ; but the proportion of county councillors who take their duties lightly and attend

¹ More than three-quarters of the whole Newcastle council actually attended half the meetings they could attend, six members appearing at 80% of all the meetings they might have attended, and seventeen at less than 50. In Sheffield (in the year 1929) there was an average attendance at 78% of the "possible" number : that is to say, at 153 meetings in the year. The councillor who that year had undertaken the heaviest burden, attended 312 out of a possible 328, whereas another councillor went to 22 meetings out of a possible 30. Anyone who fails at Sheffield without adequate excuse to attend three consecutive meetings of a committee, is reported to the council ; and in many boroughs a list is published each year showing the number of times each member has attended meetings of the council and committees.

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no more than a dozen meetings in the year, is probably higher than the corresponding proportion in local authorities of any other type. On the other hand, owing to the distance he must travel, a county councillor who attends one meeting has often to give as much of his time as a borough councillor need give who attends two.

Various principles are followed in allotting members of a council to the committees. The choice of the members themselves, the regularity of their attendance in the past, the wish of those who were formerly members of the committee, or the suggestion of its ex-chairman, may influence the council in constituting the new committees each year. But apart from these considerations, where the council is sharply divided into political parties, the party which is most strongly represented on the council, probably secures for itself a majority of seats on each of the principal committees. Each committee is free to choose its own chairman; but here again a party can make sure by the constitution of the committees that its own members become chairmen; and it may happen sometimes that chairmen of the principal committees form a sort of Cabinet, which meets regularly for the discussion and formulation of policy.¹ But that is exceptional, and even where party politics are recognized, a man of experience may be elected chairman by a committee on which his political opponents are in the majority.

¹ The London County Council is a permanent example of this practice; but no local "cabinet" can have much in common with a national Cabinet; for the council cannot be dissolved, nor does the chairman of a committee resign when the council refuses to approve of the policy which he wishes his committee to pursue.

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The chairman (who may of course be a woman) usually has great influence on the committee. He is in constant touch with the paid officials of the department; he has many decisions to make on his own responsibility between committee-meetings, and his superior knowledge of detail makes it likely that the committee will follow his lead when questions of policy have to be decided. A council sometimes guards against the danger of one man exercising an excessive influence over a committee, by a standing order which prevents anyone (in Oxford, for instance) from holding the chairmanship of an important committee for more than five years in succession. Another standing order which is commonly passed limits the number of chairmanships which one man may hold simultaneously to two (as in Hull), or even one (as in Leicester or Newcastle). But county councils seldom impose any such limitations.

The procedure at a committee-meeting depends partly on the standing orders of the council which appointed the committee, and partly on the custom of the particular committee;¹ but it usually follows some such lines as these. At the first meeting of the year, the committee after appointing a chairman decides on what day of the week and at what hour it shall meet in future, how many members must be present at a meeting before business can be transacted,² and what sub-committees shall be appointed. The first business at subsequent meetings is to hear an account, which the committee-clerk has written, of the proceedings of the last meeting (unless these have been printed and sent to members in the interval), and after

¹ Some committees have their own standing orders.

² The *quorum* is often fixed as low as three.

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making any necessary corrections to authorize the chairman to sign the account as correct.¹ The committee then works through the items appearing on an agenda list, which has been drawn up by the committee-clerk in consultation with the other officials. The reports of sub-committees are heard and discussed ; and the head official of the particular department with which the committee is concerned reports in person—partly for the information of the elected members, who can of course ask him questions, partly in order to obtain the committee's instruction on any question which the official does not think he can decide on his own responsibility. There is usually also some financial business to be done, and if the committee meeting is an important one, some representative of the treasurer's department is probably present, to give advice and information if necessary.

Meetings of a committee, especially when the committee is small, are comparatively informal : members (that is to say) sit round a table, and they may use unparliamentary language and even smoke. Indeed, they are apt sometimes in the atmosphere of the committee-room to forget their constituencies and the dogmas of their party, and even to consider each question on its merits. Almost the only statutory regulation affecting the conduct of these meetings is that which forbids anyone who has a financial interest in a particular question to take part in the discussion of it or vote. Some councils re-enforce this rule by a standing order which makes it a duty of some official (the clerk or treasurer) to warn elected members when a question arises in which they are "interested."

¹ These minutes are then conclusive evidence of what happened at the meeting, unless the contrary can be proved.

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Now that the committees have been described, it is possible to consider the work which the council does as a single body. Once more there is an obvious danger in generalization, but it seems possible to divide the business which any council has to do into three parts, which correspond roughly to the three functions of Parliament.

(a) A local authority legislates, with the purpose (among others) of constructing an administrative machine and giving each part of it a function. (b) Further, it must keep the machine supplied with certain necessary resources, such as money and a staff of paid officials. And (c) it must watch the machine in action, controlling and stimulating it if necessary.

(a) The council must perfect its own constitution before proceeding to the construction of the administrative machine. It therefore spends part of its first meeting each year in electing a mayor or chairman, and if necessary aldermen, without whom its membership is not complete. Its second constitutional duty is to draw up standing orders, determining the times when the council shall meet, the order in which business shall be done at council meetings, the method in which debates are to proceed, the number of committees to be appointed and their various duties. These standing-orders do not, of course, have to be made anew each year. Once they have been drawn up and passed by the council, they continue in force until revoked ; but at any meeting the council may resolve (usually by a majority of not less than two-thirds) that the standing-orders be suspended, in whole or in part, either temporarily or until further notice. There are certain statutory rules (for instance in the Second Schedule of the Municipal Corporations

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Act of 1882) concerning the number of meetings and other details of a council's business, and these naturally cannot be transgressed by any standing order or resolution ; but otherwise a council has perfect freedom in the arrangement of its business.

A third constitutional function of the council is to divide itself into committees, and choose from outside its own membership men and women of goodwill, as co-opted members of one committee or another. Further, it has to appoint representatives for service on Joint Boards, Joint Committees and other bodies which are set up by indirect election.

(b) The main work of supplying committees with money is done by a council in March, when the annual estimates are presented by the finance committee. Each committee has already considered its proposed expenditure in detail, with the help of the officials (whose suggestions form the basis of all estimates) ; and already the finance or other such committee has (or should have) given minute attention to the proposals of each committee ; but it is in the council meeting that they must finally be debated, and it is the council alone that decides how much money shall be raised each year, and what part of that sum each committee may spend.

When the estimate of each committee has been proposed by the chairman and approved, with or without amendment, by the council, it is finally resolved that a rate of so many pence in the pound shall be levied to meet the expenditure. Councils, of every type except the parish, can levy rates as high or as low as they choose, and there is no authority, either at the centre or elsewhere, which can interfere. But unless a council levies a rate

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sufficiently high to pay for the services which it is obliged by statute to provide, there will be trouble in store—from central authorities, private persons, or the attorney-general ; and if, on the other hand, it levies a rate so high that a surplus remains over when all the work is finished which can legally be done, that surplus must be carried over to the next year's credit account.

The financial work of the council is not completed at the meeting when estimates are approved and a rate struck, for supplementary estimates have to be considered whenever a committee finds its expenditure is likely to exceed the estimate ; and committees are supposed as a rule to ask the council's leave before incurring particular items of expenditure, even when provision has already been made in the estimates.¹ Another piece of financial business which the council of a borough may have to do is to fix a scale of fees and charges for the trading committees. Finally, there is no council of any type which does not receive and consider, sometime after the end of each financial year, a report from the auditors, who may be a firm of professional auditors employed by the council, or elective auditors,² or district auditors of the central government. This is the natural complement of the council's other financial duties.

¹ A committee must invariably obtain the council's sanction before incurring capital expenditure, for the council has to raise the loan required.

² By statute, the accounts of each borough must be audited yearly by three elective auditors, two of whom are not members of the council but elected specially by the local electorate, while the third (or "Mayor's Auditor") is chosen by the Mayor from the body of the council ; but this type of audit is for the most part quite ineffective.

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Besides money, there is another necessity with which a council must keep its committees supplied, and that is the assistance of paid officials. Minor posts (it was said) are often filled by committees on their own responsibility, but the heads of departments and similar members of the staff are appointed by the council, though various committees, and more especially the finance committee, may previously have considered the candidates and made a recommendation.

(c) The third function of the council is to take part in the actual working of this machine which it has constructed and supplied with power. This collaboration occurs at the beginning and at the end of each administrative activity. It is normally the council which must first consider the suggestions made to it from time to time in letters, circulars and the like, by central authorities and other persons. A delegation (for instance, of the rate-payers) can also present itself at the council meeting and make suggestions, though this privilege is seldom claimed. But the method commonly used for starting some administrative activity is "the motion," which any member of council, after giving notice, can propose, on any subject under the sun. In this way a committee can be instructed by the council to carry out a particular policy, or an official can be directly ordered by the council to perform some definite function. It is the council too which is supposed to see that the work of committees is co-ordinated and that any piece of business which does not automatically fall within the sphere of some department is referred to the appropriate committee.

Often too the council has a part to play before some administrative act can be completed. It

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was said above that every recommendation of a committee needs the council's approval before the particular work can be done ; and even those acts which a committee has itself performed, on the strength of delegated authority, come up for review when the committee reports to the council, and repetition of them can then be prevented either by revoking the delegated power or by giving special instruction to the committee. Further, there is nothing to prevent a council from refusing to authorize the payment of an account, though it would be most unusual for this power of refusal to be exercised at the last moment, if the council had previously allowed the committee to incur expenditure, on the assumption that money would be forthcoming.

But on occasions of at least two other kinds the council must take action if a committee's administrative work is to be done. The by-law is an indispensable part of local administration, and by-laws are not usually made by committees but by the council.¹ Services, whether of protection, welfare or convenience, cannot be adequately provided by committees unless they can persuade the council to adopt the draft by-laws which they recommend from time to time. The provision of protection, for instance, may require a variety of by-laws, concerned with bicycles and tricycles, hackney carriages, means of escape in case of fire, and the general good rule and government of the city. Welfare and Convenience demand another multitude of by-

¹ Once a by-law has been passed, it " has the same effect within its limits and with respect to the persons upon whom it lawfully operates as an Act of Parliament has upon the subjects at large " (*Hopkins v. Mayor of Swansea* (1839) 4 M. & W., p. 640).

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laws, dealing with cabmen's shelters, hawking, immature veal, spitting, stage-play licences, street collections, wireless loud-speakers and noisy animals.

Another activity which a council must itself undertake from time to time is the promotion of bills in Parliament. A county council sometimes take action of this kind, but borough councils do so more often than any other type of local authority. To take one instance : Newcastle-on-Tyne obtained from Parliament twenty-seven separate Local Acts between the years 1837 and 1927, and fifteen Provisional Orders, between 1879 and 1925.

We are now in a position to consider certain advantages which this system of committees can claim, and its corresponding dangers.

(a) "Incomparable flexibility" is one of the characteristics which especially excite the admiration of the critics.¹ A council can easily adapt its organization when any new work has to be undertaken, with little interruption of its previous activities. That the work of the old Education Boards could be grafted on to the local authorities in 1902, and the work of the Guardians in 1929, with so little dislocation of the other forms of local government, is a fact which stands to the credit of the system. The size too of a committee, and its powers or duties, can all be changed at a moment's notice, if the council sees fit. And yet however flexible the system may be, it is equally capable of becoming stereotyped and insensitive to changing conditions, for if a council trusts blindly to the organization which it inherits from the past, it will almost certainly fail in those parts of its work which fall in the no-man's land between one committee and another.

¹ Compare Redlich & Hirst, i, 325.

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(b) Another advantage gained by the division of labour among committees comes from specialization. Each elected member of the council becomes more or less intimately acquainted with some part of the council's work and with the particular officials engaged in it. This makes it possible for the unskilled amateur to become comparatively expert and to take a real part in local government, instead of voting blindly in accordance either with personal prejudice or the dictation of a political party. This specialization is not only an advantage to the individual member; it also enables each committee to discover by experience its own administrative technique, so that each of the various functions of the council can be performed in ways which are appropriate to the particular circumstances. Another advantage of this arrangement, especially when committees are appointed on the horizontal as well as the vertical principle, is that the council is continually forced to criticize itself: when it is reminded by the town-planning committee (for instance) that its insanitary houses are not adequately dealt with by the health committee, and so on.

On the other hand, there is an obvious danger that a committee will come to think of itself as a separate authority. If so, it keeps as much of its work as possible from the notice of other members of the council, and fails to co-operate with other committees. Almost inevitably the departments (within which the officials of the council are grouped) will follow the example of their committees and become correspondingly independent of one another. A typical consequence is that the council cannot under these circumstances afford to buy mechanical contrivances, such as franking

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machines (for stamping letters), electrical duplicators, and the like, for no single department has sufficient need of such a machine to justify its expense; yet if the committees were properly co-ordinated, their several departments could be made to share the use of a machine, and the council might then buy it without extravagance.

(c) Speed is another obvious advantage of the committee-system, especially when committees are small, and when the council inclines to trust them and not to insist on a repetition in the council-chamber of all arguments used in the committee-room; and it is significant that when the central government wishes local authorities to take immediate action—say, for the relief of unemployment—it usually urges them to appoint a committee and delegate executive power. Corresponding dangers are no less obvious: that the advice of the permanent official will automatically be taken; that if the elected member takes a hurried decision, he will probably not hesitate to reverse it when the plan is later laid before council; and that although he may allow the work to proceed, nevertheless if he lacks conviction he will not attempt to justify the policy when it is criticized by the rate-payers.

(d) A merit which may belong to the work of committees, especially when large powers have been delegated to them, is privacy. When negotiations are proceeding about the purchase of land or the accepting of a tender, and again when the salary of an individual officer or some question of discipline is to be discussed, it is eminently undesirable that the discussion should take place in open council. It is at such times that a committee which can come to a final decision behind closed doors is especially fortunate. The invidiousness of

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a public discussion can be avoided ; and though it may not be easy for the dozen members of a committee to keep a secret, the whole council finds such an achievement considerably more difficult. But secrecy has its dangers too. An unscrupulous person, especially if he happens to be the committee's chairman, can further his interests with much greater ease if he has only to influence a small committee, than if he has to work upon the whole council ; and even the most high-minded councillor may exercise more influence upon administrative policy than he should, if he is chairman of a committee which becomes unduly docile.

(e) Finally, members are more inclined to be persuaded by reason at a committee meeting, and fewer speeches are made for the purpose of impressing constituents, than in the council where speeches are reported.¹ Moreover, if an unwieldy body like the council is to do business, it must limit the discussion by standing orders, and forbid anyone to speak for longer, say, than ten minutes, or more often than once on the same question ; and it must secure by the same means that issues are debated one at a time. Consequently debates at council-meetings are bound to be more formal than discussions in committee.² On the other hand, in

¹ Meetings of all local authorities are open to the public, and can be reported in the press. If a certain number of councillors wish it, the names are taken down of those voting for and against any particular motion, and these too can be published.

² All debate arises upon a motion proposing that such and such a thing be done ; anyone may speak for or against the motion, and amendments may be moved, one at a time. But councils are of course free to make what standing orders they like ; and when the council wishes to discuss something informally, it resolves itself into committee there and then.

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the committee-room members are for these very reasons more likely to become irresponsible and to forget their principles and their constituents ; so that government may well be less strictly representative when administered through committees, than when the council delegates as few of its powers as possible.

Some words of Sir Frederick Pollock may be quoted in conclusion,¹ for though they were written without special reference to local government, their relevance is sufficiently obvious : “ Experience has shown, during quite three centuries of English life, that Committees are, on the whole, the least cumbrous and the most flexible organs of almost every sort of common business and common interests. Like all human instruments, they have their weak points and their besetting risks. If it is too large, a Committee may degenerate into officialism ; if it is too small, it may be captured by a despot ; in the latter case the evil is less. For in a Society ruled by a small Committee we can at least know who is master, whereas under a large Committee, with fluctuating attendance and an inert majority, this knowledge is often hardly attainable except by those in the secretary’s private confidence. If the Secretary himself does not know, which is a possible though not frequent case, anarchy is not far off. Industry, vigilance, and judgement are needful in this as in other forms of civilized social action, if institutions are to remain efficient for their purpose. Nor is the part of tact and good offices to be forgotten, especially by chairmen. An engine without steam will not run at all, but it is no less true that without oil it will run disastrously.”

¹ Pollock, *Essays in the Law*, p. 139.

CHAPTER VI

OFFICIALS

THERE seem to be three main reasons why local government should not be carried on without the help of paid officials. The first is lack of leisure. Elected members are unpaid, and only a very few of them in any place can give their whole time to local government. But the administration must be continuous, and there is therefore no alternative to the appointment of persons who will remain on duty between the meetings of council and committees, and put into action the decisions reached by elected members.

Secondly, there is ignorance. Local government requires a technical knowledge of law and judicial procedure, finance and banking, medicine, chemistry, engineering and many other sciences. Neither the town nor the county councillor can be relied on to know much about *ultra vires* or sinking funds, auto-digestive sludge conversion or sputum-tests: he must therefore have experts at his elbow to supply this deficiency. It is sometimes asked why local government, if it is concerned with technical questions, should not be left entirely to the technician; but local government is also concerned with human nature, which does not fall wholly within the field of any expert; and the experience of the amateur is indispensable, if experts are to be kept informed of what the public will not stand.

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And the third reason is the notorious corruptibility of elected members. Not that councillors or aldermen are in the habit of accepting bribes in the simple sense of the word. But they have offered themselves as candidates for a variety of reasons ; they owe their election to a variety of persons ; and the work of local government by its very nature offers them temptation in a variety of shapes. Why should they incur odium by allowing a friend to be prosecuted for persistent refusal to put his insanitary house in order ? If some contractor is to have the privilege of supplying the corporation with timber, or coal, or road material, why should it not be the firm in which the councillors have an interest ? Whatever precautions are taken either by Parliament or any other authority, many temptations will remain ; but some are removed, and some made less alluring, by the appointment of whole-time salaried officials, whose business it is to keep secrets and to remain as remote as possible from all local " interests," whether political or of any other kind.

For these and a number of other reasons, almost every local authority in England employs a staff of paid officials. As usual Parliament has not been content to leave this matter entirely to the discretion of the authorities. Every council (except the parish) must appoint a clerk, a treasurer, and a medical officer of health, each of whom must be a different person.¹ An inspector of nuisances and a surveyor must also be appointed by every council except that of the county and the parish ; but the same person may hold both of these offices.

¹ There is no legal reason why women should not be employed in any of these positions, but at present (in 1932) they never are.

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There are certain other officials (a chief constable or public assistance officer, for instance) who must be appointed by any local council which has a particular responsibility. Otherwise a council is perfectly free to employ as many or as few men and women as it chooses, to pay them (with some exceptions) what it likes, to dismiss them at pleasure, and to define as precisely or as vaguely as it wishes the work they are to do. Even the statutory officials mentioned above are in theory at least the servants of the local authority, though poor law ¹ and police officials ² are probably best considered as holding statutory positions independent of the local authority which appoints them, and officers (like the medical officer of a county) who cannot be dismissed without the approval of a central department, have a status which is hard to define.

Local government officials stand in a relation to the council utterly different from that in which the national civil servants stand to Parliament. The latter are not the servants of Parliament but of the Crown. It is the Crown, and not Parliament, that appoints the Minister who is the temporary head of a Government department and the civil servants who form its permanent staff; it is the Crown which dismisses them or accepts their resignation; and the powers which they exercise are powers of the Crown. It is true that the permanent staff of a department must obey the Minister and that the Minister is bound by a constitutional understanding or "convention" to

¹ Cf. the case of *Leconfield v. Thornely* [1926] A.C., 10.

² Cf. the case of *Fisher v. Oldham Corporation* [1930] 2 K.B., 304.

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direct the policy of his department in accordance with the wishes of Parliament, and that Parliament can discuss the action of Ministers and their departments and secure the obedience of Ministers by indirect but none the less effective means ; it is, of course, also true that Parliament could initiate legislation which would directly modify the powers and sphere of action of any branch of the national civil service ; but for all that the relation of the Minister or civil servant to Parliament is not that of servant to master. Local government officers on the other hand (with some exceptions) are servants of the local council, deriving from it their powers and functions, and their tenure of office is at the mercy of a simple resolution of the council, or perhaps in practice the decision of a single committee.

Their discretion is therefore strictly limited. Whenever in the course of their work they come upon a question of any importance, they must (as a rule) postpone action until a committee or the council has given them particular instructions. Two consequences follow : officials can show initiative only by making suggestions to their committee ; and secondly, the committee, not the official, is held responsible for any success or failure of the administration. No doubt in practice the chief officers of a local authority have constantly to take decisions and to act without consulting their committees until after the event. But under no circumstances can the official in charge (say) of a town council's electricity department exercise the same powers of independent action as those which the managing director of a private company possesses. He cannot take risks on his own responsibility ; he cannot even engage or dismiss

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members of his staff ; nor can he be held to account by his committee for any failure, or be credited with any success ; for the committee, unlike the board of directors of a company, is responsible for each particular decision of any importance.

A second distinction between the national civil servant and the local government officer is that the latter, except in certain cases, need not give his whole time to local government work or cease to engage in private practice. In many urban and rural districts, the clerk is one of the local solicitors ; the treasurer may be a local banker ; the medical officer a doctor who continues to rely for the larger part of his income on the success of his private practice among local people ; and so on. There is no guarantee that the part-time official will decide in favour of the local authority if conflicting claims are made upon his loyalty : for instance, when one of his clients is found to be the owner of an insanitary house. Claims not only on his loyalty but on his time are also likely to conflict, and if he only gives his official duties enough attention to enable him to fill in the necessary forms and make the occasional report which the law demands, he probably will not achieve a high degree of skill in the specialized work upon which a full-time medical officer would normally be engaged.

An effort is being made, especially under the Act of 1929 (as was said above) to cure this defect and abolish some of these part-time officers ; but there is no immediate prospect of success. Moreover, the present system of part-time officers has at least one advantage : it enables a local council, at comparatively small cost and without any sacrifice of its liberty, to profit from the ability of

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professional men, who are earning such large incomes that they would never contemplate the abandonment of private practice, even if they were offered much larger salaries for local government work than councils can usually offer to pay. The whole-time officers, therefore, with whom certain local authorities would have to be content under the proposed scheme, might after all be men of inferior quality, though first-class doctors who lack the capital to start a private practice are always likely to be attracted into the public service.

Other characteristics of the local government officer which distinguish him from the civil servant concern the method of his recruitment. The national civil service falls roughly into two divisions. There is a first class, three-quarters of which (on the average) is recruited from men and women between the ages of 22 and 24, who have been successful (usually after graduating at the university) in a competitive examination which covers most of the subjects studied in the course of a general education ; and there are various other classes, recruited chiefly from younger applicants, whose technical or general ability has been tested in some other way. The higher posts in the service of all departments are reserved for first-class civil servants : indeed, the same man has been known to occupy one high position after another in departments so various as the Colonial Office, the Office of Works, the Air Ministry and the Ministry of Health. Though this instance is quite exceptional, it illustrates the general truth that in the national civil service there is a division of labour which allows the man of general administrative ability to be head of a department although he has no technical qualification. Moreover,

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roughly one quarter of the first class is recruited from the lower classes of the service ; so that it is possible for any member of the service to reach a high position in the end.

On the other hand there is no national recruitment of local government officers. Each council appoints its own ; and since it would not be worth while for any but the larger authorities ¹ to hold an examination for recruiting purposes, the usual method of entering the local government service is by personal application, so that head officials and the elected members of the council have an extensive power of patronage, and it depends entirely on local conditions whether or not this power is abused.

Again, there are roughly three kinds of servants employed by local authorities : a small number of chief and assistant officers, whose work may be described as professional ; a variety of subordinate officials in technical and clerical posts ; and wage-earners, whose work is either manual or in the office. The third class does not concern us here, but the other two may usefully be compared with the two main divisions of the national civil service.

There is no division of labour in the local government service between administrative and technical officers : the head officials must therefore have technical qualifications, and are not chosen on the grounds of general ability. This also means that in most departments the subordinate officials cannot hope to rise to the professional class unless they can afford expensive technical training.² Nor is

¹ Some fifty were said to be using this method in 1930.

² There is nothing to prevent a junior clerk in the finance department from passing one examination after another and eventually rising to the post of city treasurer ;

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the university graduate attracted into the service¹; for he probably lacks the necessary technical training, and this he can only acquire (if the department which he wishes to enter is that of the chief clerk, architect or surveyor) by first paying a premium to the head official of some local authority, in order to become an articled pupil.² Such a course he probably cannot afford to take, unless he is offered a salary considerably larger than that which the council is in the habit of paying to new recruits who enter the service straight from school. One or two of the large authorities (the London County Council and Birmingham, for instance) make it possible for a few graduates to be specially recruited into their service at regular intervals; and others, such as the Kent County Council, pay nominal salaries to a few graduates, who are placed under the director of education as learners in order to gain administrative experience; but this is quite exceptional.

The number of graduates who overcome these difficulties and enter the service of a local council is small, and seems likely to remain small unless local authorities take common action, or Parlia-

but this is exceptional, for the heads of public health and educational departments (for instance) must have medical and teaching experience respectively, which the office clerks cannot acquire.

¹ This is unfortunate, for the work of the head officials, and also that of a subordinate such as the committee-clerk, calls for just those qualities which national civil servants of the administrative class (recruited from university graduates) are supposed to possess.

² Some authorities arrange for such payments to be handed over and placed in their common funds; others limit the number of articled pupils which a head-official may have under him; but the majority take no official notice.

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ment sees fit to interfere.¹ Meanwhile the division of local government officers into a professional and a subordinate class has at least three disadvantages in comparison with the organization of national civil servants : it almost always prevents men rising from the bottom of the service to the top ; it fails to attract university graduates into local government work ; and it does not find room for administrators of the kind found among first-class civil servants.

These weaknesses in the official organization make especially important the educational and other activities of various unofficial groups into which local government servants have organized themselves. Besides professional associations of particular types of officer (such as the municipal treasurer), which hold examinations and award many kinds of certificate, there are bodies such as the Institute of Public Administration and the National Association of Local Government Officers (N.A.L.G.O.), which organize conferences and summer schools, and do an important educational work through their several publications. There is also a Local Government Examinations Board, consisting of representatives of the Universities, the Association of Municipal Corporations, the County Councils Association, the London County Council, N.A.L.G.O., and the Ministry of Health. But, with certain exceptions, the local authorities do not seem to think the efforts of these bodies worthy of official encouragement.

There is no uniformity in the salaries paid by

¹ At the time of writing (February 1932) a departmental committee appointed by the Minister of Health is considering the whole question of recruitment for the local government service.

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local authorities to most of their officials. The central government has power to decide the scale on which school-teachers (but not directors of education), and those who are employed by local authorities in police-work and public assistance, and also certain medical officers and highway-surveyors, are paid; for the wages and salaries which these persons receive are paid in part out of national funds. But otherwise local authorities are free to pay what they like. The part-time officials of a small authority are usually paid on so small a scale that the council can expect to receive nothing but perfunctory service in return, whereas the large county boroughs and important counties pay their chief officers on a scale which compares favourably with the salaries of national civil servants; and it is between these extremes that the practice of most local authorities is to be found.¹

Some of the smaller councils still give the head official an inclusive salary, and let him pay for the help of such other workers as he needs; but the larger authorities choose their own employees, and pay them according to their own particular scale.²

¹ Perhaps the most characteristic activity of N.A.L.G.O. is concerned with questions of salary. Some 66,000 officials subscribed to that body in 1932; they were organized in 500 local branches, which in turn were grouped in 12 districts throughout England, Scotland and Wales.

² One may be given as an illustration, which was in use in 1932:

Office Boys . . .	10s. to 20s. a week
Juniors . . .	£60 ,, £100 a year
3rd Grade . . .	£110 ,, £160 ,,
2nd Grade . . .	£170 ,, £220 ,,
1st Grade . . .	£230 ,, £300 ,,
Chief Assistants . . .	£350 ,, £450 ,,

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The higher officials are not usually paid on such a definite principle ; the salary of one officer often grows disproportionately while that of another fails to increase, and there is often in consequence little logic to be discerned in the relative earnings of the various departmental heads. It is rare for a Town Clerk or Clerk of a County to earn more than £2,000 a year (though a salary of £7,500 is not unknown), and many important local authorities pay no more than £1,000 to their chief officer. In determining what salary to pay the chief officer of an undertaking such as the electricity department, a council has to consider the salaries paid by Power Companies and other concerns of the kind to their managing engineers ; but it frequently practises the false economy of refusing to offer a figure large enough to attract the man of first-class ability.

Contracts between a council and its officers are usually terminable by one, two, or three months' notice on either side. On the whole, this arrangement seems in practice to favour the officers ; for they are free to apply for any post which they see advertised by another local authority and then to give notice to their original employer if they are appointed, whereas a council is usually slow to dismiss an unsatisfactory officer except for actual misbehaviour, and often considers itself prevented by its own standing orders from offering an exceptional rise in salary to a valuable officer whom it is in danger of losing. But grave injustice may be done to a local official. Some councils are allowed by law ¹ to dismiss an officer at a moment's notice, regardless of any contract : in the case of *Brown v. Dagenham Urban District Council* (for instance),²

¹ *E.g.* Public Health Act, 1875, sec. 189.

² [1929] 1 K.B., 737.

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it was held by the courts of law that a local authority, which had made a contract with its clerk that there should be three months' notice on either side, could nevertheless dismiss him at pleasure. This makes it possible for honest local government officers to be victimized, especially by a council whose political complexion has changed. On the other hand there is also danger of an opposite kind which in practice is perhaps more serious: certain officers¹ cannot be dismissed without the consent of a central department, and may easily become slack or unduly independent of their employer's pleasure.

No local authority is compelled to make arrangements for pensioning its officers when they are too old for service; for the Act of 1922 which made it possible for any council to do so, was not compulsory but adoptive; and in fact few of the smaller authorities and only a certain number of county and county borough councils had adopted it by the year 1931.² But many of the large authorities had already made provision under schemes of their own, and separate arrangements, in some cases on a national scale, had also been made for pensioning certain types of servant, such as those employed by poor law and education

¹ *E.g.* the Medical Officer of Health in a county, and other officers elsewhere if their salary is partly paid from central funds. Cf. Housing and Town Planning Act, 1909, sec. 68 (5); Public Health (Officers) Act, 1921; Ministry of Transport Act, 1919, etc.

² 44 county councils, 56 county borough councils, 4 metropolitan boroughs, 66 other boroughs, 170 urban districts, 66 rural districts and 35 miscellaneous authorities had adopted it; so that some 177,000 "officers and servants" had been brought within the Act, at an estimated annual cost to the local authorities of £1,883,000. Cf. Min. of Health Report, 1930-31, p. 175.

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authorities, and the police. In 1928 a Departmental Committee appointed by the Minister of Health recommended the passing of a compulsory Superannuation Act; but it hardly seems likely that this will be done until the smaller local authorities have been abolished or forced to combine with one another for the purpose. Meanwhile the diversity of practice among local authorities in this respect is one of the principal obstacles which prevent officers from moving freely from a post in one place to a post in another.¹

What has been said so far in this chapter concerns only those local government servants who are paid by salary. Most local authorities also employ a number of workmen, who are paid a weekly wage. Some councils try to set a standard to other employers of labour by paying as high a wage as possible; but the law makes it possible for the District Auditor to prevent them from exceeding a certain limit. The number of wage-earners employed by a council depends largely on the amount of work which is done in the various departments by direct employment of labour, and not by engaging a private contractor. This in turn depends ultimately on the council's policy, but also on the number and quality of head officials employed; for if (say) a block of houses is to be built by direct labour, not only will the chairman of the housing committee have to give much of his time and attention to it, but the city engineer will be asked to shoulder a heavy responsibility. Most councils prefer to pay the extra cost of a contractor, when work

¹ The initiative of local government officers is seen in the Provident and Building Societies created by N.A.L.G.O. for the benefit of its members.

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has to be done which requires the employment of much labour, and to use direct labour only for work of a normal and recurring type.

As the number of persons employed by a city council increases, the influence exercised by a section of the local electorate, which has a direct interest in high wages, may become formidable. In 1926 Manchester City Council employed over twenty-five thousand people ; and supposing that each of them had two dependents, seventy-five thousand people (or one-tenth of the population) could be said to live on salaries and wages provided by the council.¹

Each council is alone responsible for the organization of its officials ; but usually the departments into which the staff of a large local authority is divided include a central department (under the town clerk, clerk of the county, or corresponding person), and departments of finance, police, health, public assistance, education, and the departments of the surveyor and the engineer. If services such as gas and water are provided, there is a department concerned with each ; and the total number of departments largely depends on the council's determination either to co-ordinate kindred services wherever possible under a single committee, or to divide the work of the council among many separate committees.

The central department is partly technical and partly administrative. The town clerk (to take him as an example) has certain legal duties to perform : he protects the council and committees from the danger of acting without legal authority ; he prepares any local bill which the council wishes to promote in Parliament (engaging a firm of parliamentary

¹ E. D. Simon, *City Council from Within*, p. 1.

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agents to draft it, and barristers to plead the council's case), and he attends in London when the bill is under examination; when the council is engaged in civil or criminal proceedings, he gives legal advice and perhaps represents the council in person. His administrative duties are to supervise the organization of the staff in his department, arrange for the preparation of agenda for council and committee meetings, summon the elected members to attend, and see that the minutes of all meetings are properly kept.

But the personal character of the town clerk determines in practice how great or small a part he can play in the administration. When a man of first-class ability has held the office of town clerk for a number of years, he can if he likes be the most important element in the local government of the place. Personally or through a member of his staff (the chief committee clerk, in particular) he is in touch with the activities of every committee, and he alone is in a position to know where one department overlaps another. If he is on proper terms of intimacy with the other head officials, they will constantly come and consult him. Indeed, some town clerks arrange for a monthly luncheon at which the chief officers can meet informally and discuss their common business; and some councils have a committee, consisting simply of these officials, for the purpose of co-ordinating the purchase of stores, and so on. Further, such a town clerk is always at the disposal of any elected member of the council who wants advice or information: the chairmen of committees come and consult him at all times, and especially when estimates are under consideration or some new enterprise is contemplated. His responsibility is

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exceptionally heavy in the transitional period when the annual elections occur and the membership of committees has to be decided. Paradoxically enough, a town clerk may be of special importance at times when the balance of political parties in the council has recently been altered ; for a party whose members have never before had the responsibility of chairing committees often listens with the greatest readiness to the advice of an officer who is known to be politically disinterested, even if it has promised the local electorate a fundamental change in the council's policy.

On the other hand, a town clerk who is content to do only that part of his duty which is prescribed may have no real importance in the government of the borough. He leaves all work of co-ordination to the elected members ; he has nothing to do with any official outside his own office ; he seldom attends a committee meeting and leaves the preparation of agenda and committee reports to the committee clerk. Another type of unsuccessful town clerk is the man who fails to avoid the danger of becoming identified with one political group within the council. This danger is the more pressing when the tradition of a council remains unaltered year after year ; for the town clerk naturally becomes more intimate with the chairmen of committees and other leading men than with the councillors who constitute the opposition. If the clerk fails to remain independent, he finds himself in a distressing position when the complexion of the council changes ; and these are the occasions when victimization is likely to occur.

Neither the town clerk, then, nor any one of the corresponding officials of other local authorities, is *necessarily* a figure of great importance : in fact,

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he may not be recognized as in any sense superior to the other head officials ; and in some places he is not even the best paid officer employed by the council. But since 1924 there have been signs that both the Ministry of Health and an increasing number of local authorities favour a policy of recognizing one member of the council's staff as chief officer, and of making him definitely responsible for the general supervision of the council's work. In one or two cases the legal work of the chief clerk's department has been entrusted to a separate section under a solicitor, so that the chief officer can give most of his time to general administration. It is not suggested of course that either the American City Manager¹ or the German Burgomaster² has been adopted as a model by any English local authority : neither could be copied without radically altering the whole system of local government ; but there is nothing either in the laws or tradition of local government to prevent development along the lines which the Ministry of Health and many borough councils have already approved.

An important member of the town clerk's department is often the chief committee clerk. He and his assistants can do much to make the work of committees effective, or futile ; for often he has the opportunity of extracting the important issues from a mass of material and presenting them to the committee in a form which can immediately be understood ; and frequently, when a committee wastes time over details, it is because the clerk has failed to take his opportunity.

¹ See L. D. White, *The City Manager*.

² See W. H. Dawson, *Municipal Life and Government in Germany*.

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The chief financial officer of a large city or county is also in a position of great responsibility, for in practice he shares with the chairman of the finance committee the work of directing the financial policy of the council. The extent to which all financial business is centralized in the one department varies from council to council; but some boroughs and counties, following the example of the great business corporations, have organized a finance department on some such lines as these. Under the general supervision of a treasurer and deputy treasurer it is divided into four sections. (a) An accounting section deals with all the expenditure and receipts of the council, with superannuation, investments, estimates, costing, and claims for central grants; it also supervises the book-keeping of all the other departments, and issues a statement every month to each committee and every quarter to the council, comparing actual with estimated expenditure. (b) There is a cash section in three divisions, under a chief cashier: one for collecting money paid in rents, issuing receipts, banking the money each day, and collecting arrears; another for payment of all accounts; and a third for miscellaneous work, such as the issue of postage stamps to all departments and the checking of petty-cash books. (c) The audit section watches all receipts and payments, inspects receipt-books and cheque-forms, and checks the stores which various departments keep in stock. (d) Finally, there is a clerical section, which does typing work for the whole council, files all letters, documents and statistics, operates the reckoners, duplicators, adding and listing machines, stamps the National Insurance Cards, and keeps all records of the council's business.

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This is perhaps an extreme example of the co-ordination of a council's financial activities ; but all finance departments have work of this kind to do. Estimates, and the actual receiving and spending of money are the two main functions of any treasurer. A committee or department which incurs a liability can only satisfy the creditor by making out an order on the council's treasurer, and it is the treasurer who writes the cheque. This he cannot do without the finance committee's consent, and he does not ask for that consent until he has made sure of certain facts : for instance, that the official at the head of the department concerned is satisfied that the work has been properly executed by the person claiming to be paid ; that if a contract was entered into, its terms have been observed ; and that the committee had previously obtained the council's sanction (either in general or particular terms) before incurring the expenditure.¹

Costing is a function which an increasing number of local authorities lay upon the finance department. If the estimates can be presented in a form which shows not only the expenditure contemplated but the value which that total represents in terms of children educated or pounds of refuse collected,² there is clearly a better chance that the councillors will understand the plans

¹ It has already been pointed out, however, that financial rules of a council are usually relaxed in favour of committees (such as the education and trading committees) which enjoy an exceptional freedom from the council's control.

² In such cases the finance department cannot produce unit-costs intelligently unless it co-operates closely with the other department concerned : otherwise it does not know which figures are significant.

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which they are approving. But statistical work of this kind is still comparatively rare ; and this is one of the many respects in which American and German towns are ahead of the English local authorities.

Lastly, the treasurer must watch the money market and advise the council when a loan can profitably be floated. The credit of a city such as Birmingham or Sheffield is such that a skilful treasurer can often borrow money on more favourable terms than any competitor except perhaps the National Treasury. That is why many large authorities from time to time insist on their committees formulating three-year or five-year plans for expenditure on capital account, so that as much advantage as possible may be taken of changes in the money market.

The health department of a city is under the general supervision of a medical officer, who is invariably a qualified doctor,¹ though most of his work is probably administrative and not in the technical sense medical at all. This department usually contains a sanitary section under the sanitary inspector, who is responsible for the inspection of lodging-houses, work-shops, slum-dwellings, and so on. Another section is occupied with inspection of food, perhaps under the direction of a veterinary officer. A third, under a specialist doctor, concerns itself with maternity and child welfare. Another is devoted to work among the tuberculous. Venereal diseases are the

¹ He probably also holds a diploma in Sanitary Science, Public Health or State Medicine, and is a member of the Society of Medical Officers of Health, as well as of the British Medical Association. See Robson, *Development of Local Government*, p. 250.

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concern of another ; and finally there is probably a separate section for other infectious diseases, and for administering the law of compulsory vaccination. Asylums and institutes are usually under separate management, and the medical work among children of school-age is probably left to the education department, though it is often the medical officer of health who does the work of school medical officer.

Besides a section for medical inspection, the education department probably has a section concerned with elementary, and another with secondary education. Play-centres, provision of meals, training of teachers and employment of children may each be the business of one part of the office. Indeed, the educational organization is often a kind of microcosm of the local authority : the director of education, moreover, provides the kind of general supervision which the work of the local authority as a whole does not always receive.

In counties, where the library service is a comparatively recent growth, it is usually part of the education department ; but in boroughs it is traditionally a separate organization.

The rest of a council's work is divided between such departments as the public assistance, the property and estates, the city engineer's, the city surveyor's, the water works department, etc. ; and it is especially in apportioning work among these that a council shows its wisdom or foolishness.

CHAPTER VII

FINANCE

IN the year 1928 about £505 million were spent on local government in England and Wales, and nearly £9 million were carried forward in balances; so that some £514 million must have been made available from one source or another. We have already considered the services on which this money was spent and some of the ways in which the twelve thousand local authorities who had financial transactions that year went about their business. But where did the money come from?

It came from the man-in-the-street. Sometimes he chose to have a particular service rendered him (transport in a municipal tram, for instance), and paid for it directly by buying a ticket; sometimes he chose to lend money (if the local authority offered to make it worth his while); and at other times he was forced to pay taxes to the national treasury with one hand, and rates to the local authority with the other. The money spent on local government (in other words) comes from four main sources: property, loans, the tax-payer and the rate-payer.

Local authorities own various kinds of property which produce revenue in the form of direct payments. There are perhaps lands and buildings which have belonged to the local community for

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years, and whose value depends more on chance than on the council's policy; there may also be houses built by the local authority, and water-works, gas-works, tramways, markets, harbours, etc., and these produce an income in rents or fees, the size of which is at least in part dependent on the council. Roads and bridges are not included under this head, although they belong to the local authorities; for owing (no doubt) to the nuisance which would be caused by a system of tolls, and to the difficulty of collecting direct payment in any other form, the local authorities make no specific charge for the use of the roads.

When the cause of expenditure is the building of a school, or a sewage disposal plant, or anything of such a kind that the rate-payers not only this year but for many years to come are likely to benefit, then it would be unfair, and perhaps impracticable, to demand the whole sum from rate-payers in a single year. So the local authority is allowed by Parliament to borrow: that is, to spread the payment over a period of years. It obtains the capital sum which it wishes to spend by promising to pay a certain rate of interest for so many years and by pledging its revenues as security for the loan, so that if it is unable to repay the principal at the date fixed for repayment or to pay the interest falling due each year, the lenders can apply for the appointment of a "receiver," who will then dispose of the local authority's assets (and collect the revenues and rates on their behalf), precisely as in the case of any ordinary bankrupt.

But before a council can borrow, it must obtain sanction, either direct from Parliament by local Act or through a central department; and this

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sanction will specify the exact sum which can be borrowed, the purpose for which the money is required, the period within which repayment is to be made,¹ and the security to be given to the lenders. The council is then free to raise the money by various methods, such as mortgages or the issue of stock ; and besides inviting the general public to lend, in certain cases it can apply to a statutory body (the Public Works Loans Board) which exists for the purpose of lending money (put at its disposal by Parliament) to local authorities and any other person or company that wishes to build works which will benefit the community. From these two sources, property and loans, came almost half the total sum which the local authorities disposed of in 1928.

In round figures, £165 million (or 32% of the total) came from direct payments, made in return for services rendered, and £90 million (or 18%) were borrowed. In the same year £92 million were given to the local authorities out of national revenues (that is, by the tax-payer), and £166 million (between 32 and 33% of the total) were raised by the rate-payer ; so that between 76 and 77% of the money which local councils spent did *not* have to be taken from the rate-payers to whom those councils owed political responsibility.

If we subtract the £90 millions worth of loans,

¹ The period is never longer than eighty years, and in practice it is often sixty ; and the three most common systems of repayment are instalment, terminable annuity and sinking fund. The rate of interest of course varies very widely according to the credit of the local authority and the state of the market. In 1925 the amount of interest paid (some £33 million) was equivalent to a rate of about 5% on the total amount of debt outstanding when the year began.

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for which the rate-payers of future years are responsible,¹ £423 million remain, as the total receipts of the local authorities in 1928; and of this sum 39% is contributed by direct payments, 22% by grants and 39% by rates.

Direct payments are different in kind from the rest of the income; for they are made only by persons who choose to avail themselves of some particular service. Since most of the services are monopolies and many of them, such as water, are essential to life, the responsibility of the local authority in supplying them is necessarily heavy; but it does not involve responsibility for money which has been compulsorily exacted, unless there is a net deficiency in the accounts of an undertaking, and this has to be met out of the rates. The direct payments in 1928 only failed by half a million pounds to pay for all the expenses incurred by local authorities on trade; for though there was a deficiency of £2½ million on account of water-works, trams, cemeteries, etc., there was a surplus of £2 million from electricity, markets, gas-works, corporation estates, and so on.²

Finally, subtracting the contribution of direct payments, £258 million are left as the sum taken compulsorily from the rate-payer and (in the form of grants) from the tax-payer. Sixty-four per cent. of this came from the former, and 36% from the

¹ The total debt outstanding at the end of 1928 was £1,175 million; but over £67½ million had already been set aside in sinking funds toward its repayment. In 1921 the total debt had been no more than £595½ million.

² This does not mean that *each* undertaking of a class which showed a deficiency was unable to show a surplus; for deficiencies on some undertakings have been balanced against surpluses on other undertakings in each class. Cf. Min. of Health Report, 1930-31, p. 306.

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latter source. We must now consider what principles underlie this mixture of central and local taxation.

(a) In the first place, since those who decide that a service shall be provided ought to contribute to the cost, and since the nation has determined, through the mediation of Parliament, that the local authorities *must* provide certain services (and has either prescribed by the same means, or has entrusted to some central department the duty of prescribing, a standard below which local government may not fall), the national tax-payer contributes toward the provision of that minimum of services. (b) But Parliament has also decided that the nation as a whole is interested in the provision by local authorities of *more* than this minimum. It therefore encourages them to extend certain of their activities by offering to contribute a percentage of whatever they spend on those services. (c) Further, the nation accepts some measure of responsibility for the distress from which certain parts of the country happen to suffer and is therefore prepared to make some contribution to local revenues according to the *need* of the area. In other words, Parliament has decided that for at least three reasons the national tax-payer should contribute toward the expenses of local government, though in practice these principles are obscured by the complications of a system which has grown up gradually and without logic.

At the same time the local authority is free to decide how much grander a scale of government the area can afford than the minimum, for there is no upper limit to the rates which most local authorities can levy. Moreover in practice there is a direct advantage in providing some services on

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the grandest scale which the central department will approve, for the grander the scale, the larger will be the grant from the Exchequer. The services of which this is most evidently true are police, education, and the others for which a simple percentage grant is offered. But the same is true in the long run of all the other services; for the block grant, whereby the major part of the central government's assistance is given, is ultimately calculated on a percentage basis, and the block grant can be spent on *any* local government activity.

The fact that every local authority receives some form of financial help from the centre means that the central government has no difficulty in exercising a degree of control over every activity of local government. There are various other ways in which control can be exercised, and some of them will be examined in the next chapter, but this financial sanction is behind every piece of advice and every order which the central departments choose to give; the scale on which such services as public assistance, public health and housing are to be carried on (let alone the services which earn a percentage grant), is therefore by no means beyond the influence of the central departments.

In a word, the central government finds it comparatively easy to raise the standard of local government if it wishes to do so; but (without new legislation) it finds it more difficult to make the local authorities economize.¹ For although rates

¹ The ease with which Mr. MacDonald's National Government effected economies at the end of 1931 through the issue of Orders in Council does not contradict this statement; for these Orders were made in virtue of powers conferred by Act of Parliament—the National Economy Act of 1931.

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are the one and only form of taxation by which the local authorities are allowed to raise money, so long as they have this power they are free, and cannot properly be described as the agents of Parliament or any other body. Even if Parliament refused to let a local authority engage in trade or draw income from property ; though the Ministry of Health withheld sanction for the raising of any loan ; though the Home Office forbade the payment of police grant, and the Board of Education the payment of education grant ; even, finally, if the Ministry of Health and the Ministry of Transport refused to allow payment of the block grant, yet there is no inherent reason why that authority should find itself unable to carry on the local government for lack of funds, for there is nothing to prevent it raising from the rate-payers a sum sufficient to pay *all* the expenses of police, education, public health, highways and the rest. Of course it is unlikely that any elected council would have the courage to snap its fingers in the central government's face and ask the rate-payers for so large a contribution. But that is not because the local authority is the central government's slave, but because ultimately it is the servant of the local electorate, and knows that it must give an account of its stewardship at election time. We must now briefly consider the various ways in which the contribution of the tax-payer is made.

All the percentage grants are given for specific purposes, and the first and simplest of them is for police. This is given to each county and borough which is responsible for its own police, and is equal to one-half the " approved net expenditure " : approved, that is, by the certificate of an inspector from the Home Office.

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Then there are grants for elementary and higher education, calculated by means of an elaborate formula, and usually amounting in practice to rather more than half the approved expenditure,¹ though it is likely that after 1931 many of the grants to individual local authorities will be nearer 40% than 50%. This formula takes special account of the salaries paid to teachers; and expenditure is not approved for the purpose of earning a grant unless the salaries meet the approval of the Board of Education. It follows then that the central government, by using the grant as a bribe, can practically force the local authorities to raise or lower the salaries of both teachers and police-officers.

Further, there are percentage grants for the construction of new roads and bridges, and for the improvement of certain minor roads; the improvement of a main road can also earn a percentage grant, if it is on a sufficiently grand scale.

Finally, percentage and other variable grants can be paid for housing, public health, and other purposes: for example, when a slum-area is improved, the local authority may be able to recover from the Ministry of Health one-half of whatever annual loss it suffers. The various methods by which local authorities can be assisted in their house-building activities depend on the Act of

¹ In 1928, £34 million were contributed by central grants to the cost of elementary education, out of a total of £63 million; and £7½ million on higher education out of £18½ million: an amount equal to rather more than 50% of the whole. The effect of recent changes is that higher education continues to receive grant at a flat rate of 50%, while the rate for elementary education varies above and below 50%, according to the wealth of the area.

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Parliament which authorized the building to begin ; the amount of the contribution varies with the number of houses built ; and the uncertainty is further increased by the knowledge that although local authorities are not likely to be disappointed of any assistance which they had reason, when they first incurred expenditure, to suppose they would receive, yet Parliament may alter the liabilities of the national exchequer at any time by fresh legislation.¹ Since 1929 some local authorities have also been allowed special percentage grants for work which seemed likely (in the opinion of a special central body, called the Unemployment Grants Committee) to relieve unemployment.

A number of percentage and other grants, which had been worth some £16½ million a year to the local authorities of England and Wales, were abolished by the Local Government Act of 1929 ; other sections of the Act (known as the de-rating provisions) deprived the local authorities of a further sum, which was estimated at £24 million ; and the Act accordingly provided that £40½ million should in future be paid every year out of the

¹ By the "Addison" Act of 1919, Parliament undertook to pay the whole of the annual loss sustained by a local authority which carried out a housing scheme, apart from a fixed contribution from the local rate-payers. The average annual loss on each house built under this Act was calculated in 1930 to be about £44, of which 5 guineas have to be paid by local rates and the rest by the Exchequer ; and this annual payment will continue, with variations, until about 1980. The Exchequer subsidy paid in 1930 was over £6½ million ; and by then over 170,000 houses had been built under the Act, at an average cost of more than £1,000. The Exchequer was due in 1930 to pay nearly £2½ million for twenty years under the 1923 Housing Act, and nearly £3 million a year for forty years under the 1924 Housing Act.

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national revenues, as a fixed grant toward the general expenses of local government.

But Parliament also decided to make a further contribution, and (though clearly no Parliament is bound by its predecessor) to pledge all future parliaments to do the same. It fixed this additional sum at £5 million a year, but it arranged that the figure should be reconsidered every five years.¹ This variable sum, and the fixed sum of £40½ million, together constitute an annual block grant, which the local authorities receive from national revenues, quite apart from the percentage grants which we have already considered.

The 1929 Act evidently intended that the size of this block grant should vary with local government expenditure; and the "May" Committee² estimated that one-quarter of any variation in local expenditure would be reflected by a change in the block grant at the beginning of each period. Unless, therefore, Parliament amends the Act, the block grant will vary in some such way, though never as violently, as a percentage grant varies; but from the beginning to the end of each period it will be a fixed grant.

But how was this block grant to be distributed among the local authorities? A grant given for a specific purpose must obviously go to the local authority responsible for that service; but every type of authority could claim a share of the block grant, since it was not intended to benefit

¹ That is, at the end of each "fixed grant period." In order to introduce the new system gradually, it was also provided that the first periods should be shorter than five years each. The transition was not expected to be complete until 1947.

² Committee on Public Expenditure, 1931, Cmd. 3920.

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any one branch of local government more than another.

County and county borough councils were selected as local authorities amongst whom the grant should in the first instance be divided ; and population was taken as a basis for determining the proportion each should receive. But the population of one county differs in other respects than mere numbers from the population of any other county or county borough ; and Parliament determined to take account in the 1929 Act of four of these variable factors : ability to pay rates ; the number of children under the age of five (for this was found by experience to be a fair guide to the need of an area for assistance) ; the number of unemployed men and women ; and, in the case of counties, the sparseness or density of the population (for such a service as water-supply is more expensive when the consumers are scattered over a wide area). Thus the population of Oxfordshire (for instance), which contained only 124,670 men and women, was taken for the purposes of the Act to be 417,375, and this was called the " weighted " population. The share of the block grant, which the county should receive each year of the " fixed grant period," was therefore discovered by dividing the total weighted population of England and Wales by 417,375.

All that remained was to divide this county apportionment between the various local authorities in the county. This was done by first giving each borough and urban district council a certain sum of money (which, in fact, was 12*s.* 7*d.* a year in the first period) for each inhabitant, and similarly one-fifth of that sum to every rural district council : the remainder could then be given to the county

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council.¹ In a county borough, the whole apportionment goes naturally to the county borough council.

It is now possible to turn to the rate-payer's contribution. What are rates, and who pays them? They are payments made by persons occupying property of various kinds, in proportion to the value of the property. A man "occupies" if he is in possession or control, whether he owns the property or not; the "property" may be land or premises, whether the occupant lives in the premises or only uses it for business purposes; and the "value" is based on the rent at which (on certain assumptions) the property might reasonably be expected to let from year to year.

But there are certain important exceptions. First, there are some kinds of property the occupant of which is not liable (as such) to pay rates at all. Agricultural land and agricultural buildings (barns, that is to say, but not farm-houses) were favoured in this way by the de-rating sections of the 1929 Act.² And, secondly, the value of some other kinds of property is reckoned on a different principle. Mines, factories, workshops and other industrial "hereditaments" are assessed at only one-quarter

¹ In Oxfordshire, for instance, the county apportionment was estimated (for the first period) at £219,238, from which £35,058 had to be deducted for the county districts, leaving £184,180 for the county council. Special grants have also to be made to county districts in many counties, either because they provide maternity and child welfare services, or because they have suffered a special loss of rates.

² In 1896 a first instalment of relief was given to the agricultural interests, and in 1923 a second. The 1929 Act therefore did not introduce, but applied more extensively, the principle of "inability to pay."

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of their value. Further, premises which are occupied for the purposes of transport (by railway, canal or docks), are similarly assessed ; but their occupants are not allowed to benefit by this reduction, for by reducing their fares or granting rebates they have to pass on the advantage to industrial consumers.

So before any rate can be levied, the difficult work of valuation (or assessment) must be done ; and for this purpose elaborate machinery has been constructed. Every five years the rating authority through its paid officials must obtain particulars of each rateable hereditament from the occupier, and make a draft valuation list. This list is open to public inspection for twenty-one days and is then handed over to another authority, the Assessment Committee, of which no one may be a member who has been concerned with the drafting of the valuation list. This committee finally approves the list, after hearing grievances from private persons who think their property has been assessed too highly, and from local authorities who think the opposite ; but parties who still have a grievance can appeal to Quarter Sessions, or (if both sides agree) refer the dispute to arbitration ; and a further appeal can in some cases be made to the High Court, and thence to the House of Lords.¹

Once the work of valuation is complete, each local authority (including that of the parish) knows the rateable value of its area and the amount of money it can raise by imposing a rate of a penny in the pound. For example, in an area where

¹ In December 1930, Lord Buckmaster said in the House of Lords that 18,000 appeals to Quarter Sessions and 800 to the High Court were still undecided. Compare *Potteries Electric Traction Co. v. Bailey* [1931] A.C. 151.

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rateable value is £10,000, a penny rate will produce 10,000 pence (or about £40); so that if the local authority estimates that £4,000 must be raised in the coming year to meet the expenditure uncovered by central grants or other revenues, it knows that a rate of 100 pence in the pound must be levied throughout the area. If it happens to be a rating authority, it can itself levy this rate without more ado; but county and parish councils are not rating authorities, and must therefore issue a "precept" to the borough, urban and rural district councils in the area, telling them to levy the required rate in addition to the rate which those authorities wish to levy for their own purposes.

Once upon a time the county council of Middlesex (to take an example at random) calculated that a rate of $8\frac{1}{2}d.$ must be levied to cover its estimated expenditure on higher education, and a rate of $3s. 11d.$ to pay for the other services which the council intended to provide throughout the county. It therefore issued a precept to all rating authorities in the area for a "general county rate" of $4s. 7\frac{1}{2}d.$ But the council had also to provide certain services (such as elementary education, maternity and child welfare, or libraries) in some districts and not in others: it accordingly issued separate additional precepts to the particular districts affected; and so the total rate demanded by the county council from South Mimms Rural District (for instance) was $6s. 4d.$, while no more than $4s. 7\frac{1}{2}d.$ was claimed from the borough of Ealing.¹ South Mimms Rural District Council might only need to levy a rate of, say, $2d.$ to pay for the expenses incurred on its

¹ Being one of those boroughs which are responsible for elementary education, Ealing had to levy a separate rate for this purpose.

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own responsibility ; but the rate which it actually levied would then be 6*s.* 6*d.*, in order to meet the county council's claim. There is always the danger, then, that the rate-payers of a district will draw one or other of two fallacious conclusions : either they blame the district council for the heaviness of the charge, and consider the county council an unimportant body ; or else, if they recognize the lightness of the district council's responsibility, they decide that that authority is unimportant, and blame the county. In neither case will they probably take an active part in the next election of *both* the local authorities concerned.

The principle which underlies the rating system is that each local council must pay for the services which it provides by obtaining from the rate-payers a sufficient sum of money to meet all the expenditure which is not covered by grant, loan or direct payment. Each administrative authority has therefore at least a measure of financial responsibility. The consequence is that the level of rates levied in various parts of the country varies between very wide limits ; for no two areas have either the same resources or the same needs. Whereas the average rateable value of each member of the population of England and Wales in 1928 was £6 9*s.* 4*d.*, the average rateable value per head in the county borough of Merthyr Tydfil was only £3 12*s.*, and the corresponding figure in the county borough of Blackpool was £11 12*s.* Actually a rate of one penny levied in Blackpool would produce more than four times as much as a penny rate in Merthyr Tydfil ; so that the money which Blackpool raised by imposing a rate of 7*s.* 6*d.* for every pound of rateable value in 1928 was a larger sum than

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Merthyr Tydfil raised by imposing a rate of £1 9s.¹

Since the system of English local government is built on the assumption that local communities should decide for themselves the scale of local expenditure which each can afford, it is not surprising that great differences should appear between one place and another; but when the financial resources of a local authority which has administrative responsibility reach a certain limit, any further effort will be unlikely to produce a proportionate result. There are then at least three possibilities: either to reduce the financial responsibility by increasing the contribution of the national exchequer (this Parliament claimed to be doing in the 1929 Act); or to reduce the administrative responsibility by transferring some local government service to the central authorities (it was urged by the Labour Party in 1928 that public assistance should become a national service); or to leave both financial and administrative responsibilities unaltered, and increase the resources of the local authority. In order to follow this third course, some other form of local taxation than rates would have to be discovered. We must now inquire whether rates are unsatisfactory from any point of view besides that of the local authority.

The rate-payers, of any area within which a separate rate is levied, find that they are made to contribute sums which vary according to a certain

¹ In 1927 seven authorities levied a rate of more than £1 10s.; in 1928 three did so; but in 1930 only three levied rates of more than £1 5s., and none exceeded £1 10s. The average amount in the pound of rates collected in England and Wales in 1929 was 11s. 6d., and in 1930 11s. 7d.

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scale ; for although a uniform rate is levied by the local authority, the amount which each ratepayer has to produce depends on the assessment standing against his name in the valuation list. They have a right therefore to ask on what principle they are compared with one another ; and the answer must be made historically.¹

The modern English system of rating is directly inherited from an Elizabethan Act of 1601, which consolidated the poor law and gave parishes the right of levying a compulsory rate. When contributions toward the relief of the poor and other purposes had been voluntary, people either gave nothing or else contributed according to their real ability. But when a compulsory rate began to be levied, some rule of thumb had to be found for determining ability : more by accident than design, the value of a man's immovable property came to be adopted as the standard. So long as this constituted the greater part of a man's substance, it could be taken not unfairly as a guide to his ability. But at once the mistake began to be made of assessing a farmer's ability not by the neighbours' estimate of the profits which he derived from his land, but by reference only to its rental value. The principle of ability was further confused by a legal decision in 1633 (Sir Antony Earby's case) which encouraged the growth of a popular fallacy that land, and not men, paid rates. Henceforth an owner was not held to be assessable for any property which he had leased to a tenant, on the ground that otherwise rates would be paid twice over in respect of the land. In fact, if *land*

¹ See Cannan, *Local Rates in England* ; and *House of Commons Reports*, May 13, 1925, col. 1878.

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were rated, it would certainly be unfair that both landlord and tenant should pay rates in respect of it; but if *men* are rated and the rent paid is only relevant as evidence of men's comparative ability to pay, then there is no valid reason why both landlord and tenant should not pay rates in respect of the same land, for the ability of neither party is necessarily affected by the receiving or payment of rent.

Meanwhile the assessment of householders for the poor rate came to serve as the basis of various other rates which were levied for sewerage, paving, lighting and other purposes; and the principle of payment according to ability became increasingly confused with the principle of benefit received.

With the coming of the industrial revolution, the rough-and-ready method of assessing what rates a man should pay by reference to the rental value of his immovable property came to be less and less adequate; for it did not discriminate between the factory-owner who was making profits and one who was not, nor did it take account of the fact that many of the household wants, which local government in the nineteenth century was beginning to supply, were of commercial value to the industrialist or to the occupier of agricultural land: in other words, the standard was not a good test either of ability or benefit.

This inadequacy was recognized in the Public Health Act of 1848 (for instance), which excepted certain types of property from assessment; in 1896 and 1923 occupiers of agricultural land were relieved; and in 1929 the complaints of both farmer and industrialist were given considerable satisfaction, partly on the principle of inability to

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pay,¹ partly on the ground that these types of occupier did not benefit from local government services.²

In consequence of this historical development, the standard of assessment, by which the rate-payers of an area have to be compared with one another, is based on two quite different principles, that of ability and that of benefit, neither of which could be carried to its logical conclusion without proving incompatible with the other.

If, then, the rate-payer be told that assessment is a means of comparing his ability to pay rates with the ability of his neighbour, there are various retorts that he can make. In the first place, if the assessment took any account of the other kinds of wealth (such as salary, profits, rents and interest), it might appear at once that his neighbour were richer than he : as it is, he is assessed the more highly of the two, merely because in one particular respect—the size and position of his house—he seems to be the richer man.

Secondly, why should the industrialist who makes large profits be considered no more able to pay rates than one who makes no profits ? Why should no distinction be made between the successful and the unsuccessful farmer ? And why should both these kinds of person be considered less capable than any other person ?

Thirdly, the rate-payer (especially if he is a poor man) may point out that when two persons are compared whose total wealth is unequal, rent

¹ The farmers put forward the argument (among others) that the land was their raw material and should therefore not be assessed as if it were immovable property.

² Agriculturalists have to pay separate rates for services such as land-drainage from which they evidently benefit.

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and similar charges for housing are found to be a larger proportion of the poor man's expenditure than of the rich man's. Since the burden of rates which a householder has to bear is roughly proportionate to the rental value of the property, it follows that this burden presses with proportionately increasing weight, the poorer the rate-payer happens to be. Accordingly, whereas the income tax is "progressive," because it falls with increasing heaviness the richer the man becomes who has to pay it, rates are actually "regressive."

Finally, when the rate-payer is told that all these features in the rating-system of which he complains are justified by the fact that the income tax and other kinds of national taxation are levied on a scale which *does* take account of other forms of wealth, he simply replies that if rates as well as taxes are supposed to be graduated on the principle of ability, it appears inconsistent that an arbitrary principle should be followed in the case of rates and a scientific principle in the case of income tax. The fact (he will add) that wealth is more scientifically assessed for the purpose of the income tax does not mitigate the injustice of the rating system, but encourages Parliament to allow an increasingly large proportion of the cost of local government to be paid out of national funds.

On the other hand, if it is suggested that assessment is designed to make people pay in proportion to the benefit they receive, the rate-payer can make this complaint (among others), that the benefit which a man receives from local government depends on a number of variable factors. Though everyone may be said to have a social interest in the provision of the various services, the commercial interest which people have varies with the

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nature of the service and the circumstances of the consumer.¹ It is therefore impossible to compare the benefit which people receive from so great a variety of services by reference to any single standard of assessment. The rate-payer can also argue that in the long run it is the *owner* who gains, when his property is improved by an activity of the local council (for instance, in preserving an open space near by); and yet it is by the *occupier* (who will be made in the end to pay higher rent to the owner in consequence of the improvement) that rates are paid and the improvement made possible.

There is also one further criticism of the system, which not only rate-payers but every member of the community can make: that it encourages the growth of slums and overcrowding, and discourages the building of houses on the outskirts of a town. The smaller the rooms, the less need an occupier pay in rates, since he is assessed only on rental value; nor does the burden of rates increase, however many people are crowded into every room. As the population of a city increases, more and more people have to find lodging in the built-up part of the city where they are not highly assessed. As the slum grows, an increasing amount of money has to be spent by the local authority, and the rates levied throughout the city rise. This makes it still less possible for the poor people to live in any part of the city but that in which the assessments are lowest, and the slum deteriorates still further; the rates therefore rise again, and the vicious circle continues. Meanwhile the owner of

¹ That is why services (such as public assistance) are sometimes called onerous, and others (protection and roads, for instance) beneficial; but this classification is thoroughly unsatisfactory.

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property on the outskirts of the city has no inducement to develop it in haste : he pays no rates in respect of the land so long as it remains " agricultural " ; the longer he waits, the more intense will the demand for houses grow, and the higher will be the rents which he can obtain.

Objections, in fact, can be made to the English rating system by local inhabitants, even if they have no rates to pay, as well as by the local council in need of revenue ; and the only reason why the system has survived is that no Parliament has thought any alternative worth trying.

CHAPTER VIII

CENTRAL AUTHORITIES

BESIDES his supreme task of legislation, the King in Parliament can be said to perform at least three functions. First, he creates an administrative machine and gives to each part of that machine, including himself, particular functions; secondly, he supplies the machine with some indispensable assistance in the form of money; and thirdly, he exercises a general control over the whole administration. The machine created under the first of these heads consists of two parts, the Judiciary and the Government; and the latter can be further divided in two: a group which is commonly called the Executive, consisting of Secretaries of State and other Ministers of the Crown, on the one hand; and departments of the central government, local authorities and various public bodies on the other. The mutual relation of these several organs of the Government, to each other and to Parliament, is the subject of this chapter.

The two groups into which the Government has been divided for the purpose of this discussion are linked together in the first place by one simple fact: the head of each department is a Secretary of State or Minister. The Home Secretary, for instance, is a member of the Executive, and at the same time head of a department called the

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Home Office. Further, since all Secretaries and Ministers are also members of Parliament, the same link which binds the Executive to the departments must also connect the departments with Parliament.

This connection means that anything done in a department, say the Ministry of Health, can be questioned and criticized in Parliament, since the Minister of Health is assumed to be responsible for everything done by the department of which he is the head. It also means—and this second implication is in fact the more important—that the policy of that group of Ministers known as the Cabinet must influence the work of the departments; for even if the head of a department (say the Ministry of Transport) is not a member of the Cabinet, he is a Minister, and therefore a member of the Executive; and the policy of the whole Executive is determined by the Cabinet on all important points.

The Ministry of Health then (like all other departments of the central government) has to do what the Minister who is its responsible head tells it to do; and since it is thus the Minister's agent, it is also necessarily an agent of the Cabinet. But neither Minister nor Ministry can properly be described as an agent of Parliament. For once a law has been made and until it has been repealed or amended, Parliament, in spite of its unlimited power of legislation,¹ has no direct control over the administration of the law, except in the limited sense of voting money and criticising. Within the boundaries set by law, central and local

¹ This legislative discretion is of course tempered by regard for the electorate, especially when a general election is known to be impending.

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governors can act on their own initiative without asking Parliament either for permission or confirmation. The discretion of the local governors, however, is not only limited by the law, but also (as we saw) by responsibility to the local electorate. So too the central governors are limited in one sense by the law, and in another by the fact that each department has at its head a Minister, who is responsible to the Cabinet, and therefore ultimately to the national electorate.

We are here concerned with the central departments only in so far as they have to do with local authorities. The Treasury, the Board of Trade, the Ministry of Agriculture and Fisheries, the Ministry of Labour, the Ministry of Pensions and the Lord Chancellor's Office all affect local government in one way or another. But local authorities have more to do with the Home Office and the Ministry of Transport,¹ and still more with the Ministry of Health and the Board of Education. These four departments, and especially the Ministry of Health, are therefore the main subject of this chapter. Their functions may be considered as falling under one of two heads, legislation or administration. There is no clear line of demarcation between the two, and the terminology of statutes is so chaotic that official names of a department's various activities are no evidence of their true

¹ The Central Electricity Board and the Electricity Commissioners are both loosely connected with the Ministry of Transport. Their importance is very great, especially as their work in co-ordinating the generation and distribution of electricity on a national scale, without themselves displacing either local authorities or private enterprise, is a new experiment in state-activity. But they affect no local authority which does not have an electricity department of its own.

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nature.¹ It seems best to mean by legislation the making of any rule or regulation which applies generally to a *class* of local authorities, and by administration the making of an order which affects any one local authority in particular.²

Something must first be said of the legislative work of central authorities. And this falls into two parts: either it is done before Parliament acts, in which case it is not strictly speaking legislation at all, or else afterwards, in which case it is delegated legislation. Before a Public Bill concerned with local government becomes law, the Ministry of Health, or some other department, has often exercised an influence of some importance. There may have been a Royal Commission whose recommendations form the basis of the Bill; and the evidence of the Ministry (given in the name of the Minister) has probably been one of the principal foundations on which the Commission built its report. Large portions of the Local Government Act of 1929, for instance, are clearly traceable, through the Reports of the Onslow Commission, to the Ministry of Health. Often too Bills are founded on reports of Departmental Committees appointed by a Minister to investigate some difficulties brought to his notice by the department.

But a still more direct influence is exercised by central departments between the time when the Cabinet has determined to introduce legislation affecting local government and the time when a

¹ See Report of Committee on Minister's Powers (Cmd. 4060 of 1932), p. 16 and *passim*.

² Aristotle, in the fourth century B.C., seems to have thought that it was a class of *persons* with which law was concerned: Austin, in the nineteenth century A.D., that it was a class of *actions*.

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Bill is presented to Parliament. The 1929 Act is a fine example : it might almost be said that the government of the day wished to modify the rating system, and the Ministry of Health seized the opportunity of introducing reforms which have in effect altered the whole structure of local government.

Moreover, while a Public Bill connected with local government is before Parliament, there are often informal consultations between the Minister and the various associations of local authorities concerned. The attitude of the Minister is of course determined largely by the temper of his supporters in Parliament, and by the strength of the Opposition. But the indirect influence upon him of such bodies as the Association of Municipal Corporations and the County Councils Association is often considerable, and one of the ways in which this influence operates is through consultation between the Minister, the permanent heads of his department, and the interested parties. Further, when a local authority promotes a Private Bill, all the departments interested in the subject-matter of it are given an opportunity of criticism ; and in fact the local authority seldom presses any clause to which a department takes objection.

Another important part of this work is done through the issue of Provisional Orders. These can only be made when a statute has been passed which specifically empowers a Minister to issue them, and they might therefore seem to form part of delegated legislation ; but they are properly considered as part of the central authority's pre-legislative work, for they are only provisional, until Parliament has passed a Provisional Orders Confirmation Act, giving the force of law to a

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number of them simultaneously. Thus the Minister of Health drafted an Order in 1930 (following a recommendation of the Onslow Commission), which would confer on all rural district councils a large number of powers which had previously belonged only to urban authorities.¹ However, this procedure is much more often used at the request of particular local authorities, who wish some special favour; and in such cases the Minister's action (according to our terminology) is administrative and should not be considered here.

We must now pass to the work of delegated legislation which some central authorities have to do. Many reasons are given for the extended use of this method of legislation in the twentieth century. No doubt it is partly due to an increase in the business of Parliament, as further subjects have been brought within the sphere of state activity, and partly to a change in the subject-matter of legislation which has tended since the middle of the nineteenth century to become increasingly personal,² and at the same time to require more technical knowledge. Parliament, which used to deal with details by appending Schedules to the Acts it passed, has discovered that a more convenient method, especially at a time of crisis, is to delegate a part of its legislative function to a department, and to confine its own attention to matters of principle. It is still far from true to say that Parliament has ceased to be interested in details: sometimes, for instance in the Land Drainage Act of 1930, it tries to delegate as little of its legislative power as possible; but in legis-

¹ Under powers granted by the Local Government Act, 1894, sec. 25.

² See Dicey's *Law and Public Opinion*, chaps. 7 and 8.

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lation concerned with town-planning, housing, etc., it usually leaves a part of the law to be made by Ministers and their departments ; for apparently it considers that, in order to allow the making of experiments, the risk of introducing uncertainty into the law must be run.¹

Usually, however, the delegation of power is not absolute ; for Parliament has made various provisions in the hope of ensuring for itself the last word in legislation. For instance, most Orders and Regulations have to lie on the table of both Houses for a space of time during which petitions may be made against them, and there are other similar safeguards. But such a mass of these Orders accumulate on the table and so few Members of Parliament ever trouble to read them that in fact the use made by departments of this delegated power is seldom questioned. The only certain effect of these precautions is to lull Parliament into further acquiescence and so to encourage an extension of the practice.

There are two chief ways in which the power of delegated legislation is used : by the issue of Orders in Council, which are nominally issued by the Privy Council and actually by the Cabinet or some Minister or his department ; and by statutory rules, regulations or orders, which in practice are made by the departments. But the effect of either method of procedure is much the same, and it may be felt by the local authorities in almost any part of their work.

¹ The growth of the annual number of statutory rules and orders after 1894, and the decrease in recent years (by 1929 the pre-war level had been reached) is set out in the evidence given by Mr. Carr before the Committee on Ministers' Powers on the 15th day.

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The form in which all local councils (except the boroughs) must set out their accounts each year ; the kind of report which medical officers must send to the Ministry of Health ; the qualifications which certain officials must have : these are the subjects of some common departmental regulations. But in the spheres of police and education, and still more in that of public assistance, this general control is considerably wider than in other parts of local government. The Home Office makes regulations for the whole police force of the country, which every watch committee and the standing joint committee of every county must obey. The Board of Education prescribes whatever level it considers satisfactory for schools of the elementary and every other grant-aided type, and has exercised a continuous influence of great importance on the development of a national system of education. For instance, as soon as the Education Act of 1918 commanded local authorities to give children "advanced and practical instruction," the Board began to work out schemes of reorganization along just those lines which were later popularized by the Report of the "Hadow" Committee in 1928.¹ Again, though Parliament has done nothing further since the report was published to give effect to the recommendations, a great deal of the suggested re-organization has already been carried out, and this is largely due to the Board of Education.

¹ The Consultative Committee on the Education of the Adolescent, presided over by Sir W. H. Hadow, had been appointed by the Board of Education in 1924 "to consider and report upon the organization, objective and curriculum of courses of study suitable for children who will remain in full-time attendance at schools, other than secondary schools, up to the age of 15. . . ."

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Similarly, before 1931, when an Education Bill which had been under consideration for some time was finally abandoned, the Board had succeeded in making many local authorities develop their schools on the assumption that Parliament would shortly raise the compulsory school-leaving age to 15.

But nowhere has the central authority so much legislative power over local administration as in the service of public assistance. Section 1 of the Poor Law Act, 1930, is worth quoting, for it describes in summary form the exceptional nature of this power: "The Minister of Health . . . is, subject to the provisions of this Act, charged with the direction and control of all matters relating to the administration of relief to the poor throughout England and Wales, according to the law in force for the time being. Provided that nothing in this Act shall be construed as enabling the Minister to interfere in any individual case for the purpose of ordering relief." One further quotation, from section 136, may be made: "For executing the powers given to him by this Act the Minister shall make such rules orders and regulations as he may think fit for . . . the guidance and control of the councils of counties and county-boroughs and their officers so far as relates to the management or relief of the poor and subject to the provisions of this Act, prescribing their duties . . . and generally for carrying this Act into execution in all other respects." The Public Assistance Order, 1930 (S.R. & O., No. 185), is a good instance of the wide use which can be made of these powers. It consolidated all the existing orders and amended them, with the special intention (in the words of the Ministry of

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Health) “of bringing the administration of outdoor relief into accordance with present-day industrial conditions.”

Besides these two legislative activities the central authorities have a third function, that of actual administration. If it were not for this administrative activity, the legislative work of both Parliament and the departments would have nothing but the courts on which to rely for its enforcement. As it is, a general more or less continuous supervision is kept over each of the local councils, exercised with the particular intentions of preventing knavery, limiting folly and encouraging progress. Since this practically covers the whole field of local government, some further classification is required.

The administrative co-operation of central government with a local authority can be seen in (a) the granting or withholding of money, (b) the completion of some particular activity, (c) the determination of a dispute, and (d) the giving of advice.

(a) The four sources of a local authority's revenue are all occasions for the co-operation of a central department. Grants, in the first place, are used to bribe a council into developing its work. The percentage grants are the most obvious instance of this bribery, but the block grant is a still more powerful bribe; for whether or not it shall be paid to a particular authority, and what portion of it, if any, shall be withheld, are questions which the Ministers (in effect, the Ministries) of Health and Transport must decide. Their decisions are based on principles laid down by Parliament in the 1929 Act, but these principles are so vaguely defined that in effect the decision of

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the Ministries is almost unfettered, though if they withhold a grant in whole or in part they must report the case to Parliament and give their reasons. The power of maintaining "a reasonable standard of efficiency," which formerly could be exercised only over those particular services that received a percentage grant, now extends to every branch of a local authority's work, and this power is further strengthened by the size of the grant which the departments have to distribute or withhold at their discretion.

Again, the word efficiency can be interpreted in two new ways. First, a local authority can now be penalised not only (as in the past) if the health or welfare of the inhabitants has been endangered, but also on the ground that there has not been a sufficiently progressive development of the services: nor is progress judged by the past history of the authority, but by reference to the standards maintained in other areas whose financial resources and other relevant circumstances are substantially similar. Secondly, the word efficient is taken to mean "not unreasonably expensive." Hitherto the question of how much rate-payers should be made to pay for their local government, has usually ¹ been left to the decision of the rate-payers; but the duty of deciding that question now partly falls on the Minister of Health.

Borrowing is another way in which a local authority raises money, and here again an opportunity is found for bringing the local authorities into relation with the departments. Sometimes a local authority which has obtained special powers from Parliament by a local Act, may borrow the

¹ But see next paragraph, about the sanctioning of loans.

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money it needs without consulting any central department¹; and occasionally the money can be raised, on such security as that of sewage works, without the leave of a department. But the vast majority of loans have to be sanctioned by the Ministry of Health. The local authority's general financial position, the advisability of the particular capital expenditure proposed, plans for repayment of the principal and details of the work for which the loan is needed (the position of a coal-shed in the lay-out of a house, for instance, or the kind of window-frame to be used in a new school), may all be considered on these occasions; and in theory at least the Ministry of Health, if it chooses, can dictate its own terms without difficulty to local authorities which want to borrow. In 1932, for instance, the Ministry (interpreting the National Government's intention) practically prevented local authorities from building any but the cheapest type of house; there was no legislation, but the Ministry issued a circular setting out its views on the matter, and any local authority wishing to borrow money for houses of a larger kind was informed that the Ministry's sanction could not be given.

The central departments co-operate less directly where that part of a local authority's revenue is concerned which comes in the form of direct payment. They sanction sales of corporate property and they inspect the lists of fees charged by local authorities for the supply of gas, electricity, and such services as tramway transport; but otherwise they leave councils free to decide whether

¹ At least £10 million were borrowed under independent powers in 1930, and therefore did not come to the official notice of the Ministry of Health.

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the rate-fund shall subsidize or be subsidized by the trading services,¹ and what use is to be made of public property.

Rates, the main source of an authority's income, are left almost entirely to the council's discretion. In the work of valuation, which must precede the raising of money by a rate, the Central Valuation Committee² performs an important advisory function, but without any power of stimulus or control; otherwise there is practically no interference with valuation or rating from any department of the central government, and local authorities have undivided responsibility and almost unlimited power. There is of course the inevitable limitation of the law; and the law may at any time be amended by Parliament in such a way as to diminish or destroy the local authority's freedom. The control of the courts, too, is as absolute here as elsewhere. But within these limits, the local council is autonomous and need co-operate with no one.

However, local authorities cannot spend money as freely as they can collect it. So far as any central department is concerned, councils of almost all the boroughs (whether county boroughs or not), can make what arrangements they like for auditing the major part of their accounts; but

¹ The Electricity Acts prevent aid from being given to the rates except on certain conditions.

² This Committee consists of some thirty members, including representatives of rating authorities, county valuation committees and assessment committees. It issues a report each year, and all assessment committees must send it copies of their annual reports. Since 1930 there has also been a central Railway Assessment Authority, whose decisions are binding on rating authorities.

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all other local authorities must submit all their accounts each year for audit by the District Auditors. These officials are appointed and paid by the Minister of Health; but they do not belong to his or to any other department, and there is no Minister responsible to Parliament for their decisions. Their function is quasi-judicial and accordingly they are allowed, at least in theory, to remain independent of any politician or department. But whatever their constitutional position may be, they are exceedingly useful to the Minister.

Besides inspecting all the accounts of every local authority except the borough, they also audit those accounts of borough (and county borough) councils which refer to housing, police, education and certain roads; for percentage grants are only paid to a local authority whose accounts have been passed in this way.¹ But the nature of the District Auditor's power is even more significant than its extent. He can not only disallow any item of expenditure which he considers illegal, but "surcharge" it on the elected member or official whom he thinks responsible. So when a question arises in council or in committee concerning the legality of a proposal, it is known that if money is spent in a way which the auditor considers illegal, the persons responsible will have to pay, unless they appeal successfully against the auditor's decision; and this knowledge re-enforces substantially the natural

¹ There were in 1929 six county boroughs and some thirty-six other boroughs whose accounts were wholly inspected by the District Auditor, for the councils had obtained special power to co-operate in this way with the central authority. A local Act of 1930 (the Middlesex County Council Act) provides that any borough council in the county may pass a resolution making all its accounts subject to district audit.

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desire of the committee or council to keep within the law.

Judging from the desire of certain boroughs to come voluntarily within the district auditor's jurisdiction, it seems that even local authorities are prepared to think him useful; but to the central departments he is of still more obvious value. He gives them authoritative information about the financial condition of local authorities up and down the country¹; when he sees fit, he makes a detailed report to the Ministry of Health²; the Ministry can then, in its own words, "communicate with the Local Authorities concerned with a view to effecting improvements"; and "it is satisfactory to note that generally the suggestions made by the Auditors have been adopted." Further, when the department suspects irregularity, an extraordinary audit can be authorized.³

(b) But apart from finance, there are certain acts of local administration which can not be completed without the co-operation of a central department: sometimes this help is needed in order to start the local activity, sometimes in order to confirm what the council has done. There are various ways in which a central department can

¹ His value, both to central and local authorities, would be still greater if he paid less attention to the technical business of accounting, and more to the general questions of finance. See W. A. Robson, *Development of Local Government*, p. 352.

² In 1930, when the accounts of 10,844 authorities were audited by the District Auditor, 4,405 detailed reports of this kind were made.

³ In 1930, for instance, sixty-two of these audits were made. Ninety officers were found to have behaved improperly and eighty-one of them ceased to hold office in consequence.

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perform functions of the former type. A local authority, which has already obtained special powers from Parliament by a local Act, can have these powers further extended by Provisional Order, though, as we saw, this requires confirmation by Act of Parliament. A Joint Board can be constituted out of several local bodies and given financial powers of its own. The Minister may even himself take the initiative in combining areas and authorities for certain administrative purposes. Again, when a local authority has defaulted, the Ministry of Health can step in and see that the work is done, either by making another council responsible (a county council, say, when a rural district council fails to perform its sanitary duties) or by doing the work itself. Under powers given by an Order in Council of 1931, the Ministry of Health may go so far as to supersede a local authority altogether if it fails in certain of its duties : just as the Boards of Guardians at Poplar, Chester-le-Street and Bedwelty were superseded (under the ordinary law, as it was before the 1929 Act), and Commissioners nominated by the Ministry of Health in their place.

Secondly, there are many occasions when a local authority has to obtain the approval of a central department for what it wants to do. All by-laws which are concerned with the public health require the Minister's confirmation, and though by-laws passed by a borough or county council for the good rule and government of the place do not require confirmation, they must be sent to the Home Office and can be annulled within forty days by an Order in Council. Schemes which a local authority makes for the purpose of town-planning or slum-clearance have no legal authority

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until the Minister has approved them ; and land can seldom be acquired compulsorily without the consent of some department. Often this means that a local inquiry must be held, under the presidency of a departmental officer, just as if application had been made for the issue of a provisional order ; and at such times any person who dislikes the local authority's proposal can appear and speak against it.¹

Further, Parliament often enacts that the local authorities which are to be responsible for some new piece of work (public assistance, assessment, or education), must work out administrative schemes and have them confirmed by the Minister. In such cases the department will probably work out a model scheme, and bring it to the notice of the local authorities : the latter can disregard it, but, if so, their schemes probably fail to obtain the necessary confirmation.

Finally, the Minister's approval is required before certain officers can be appointed or dismissed. Here again the services of education, police and public assistance are found to be under closer control than other parts of local government. It seems, for instance, since the case of *Tozeland v. the West Ham Guardians*,² that officers engaged in public assistance are not properly speaking the servants of the local authority ; and in certain circumstances at any rate they must do what the Minister tells them, regardless of the local authority's instruction. Nevertheless in practice the Minister would be slow to issue orders to a particular officer, over the head of the local authority, and there have been occasions when the Minister's

¹ Including members of the local authority.

² [1907] 1 K.B. 920.

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power has turned out by no means as effective as the words of the Poor Law Act might suggest.

(c) The judicial function which the courts of law perform, and the difference between their relation to local government and the relation of the central departments, will be discussed in the next chapter; but there are certain questions of a judicial or quasi-judicial kind which Parliament has assigned to an administrative authority for decision, not to the courts. As we shall see, these decisions are usually subject to some kind of supervision by the courts, but the Ministry of Health or the Board of Education is primarily responsible for them.

For example, if a local authority assumes responsibility for the future upkeep of a road which had previously been private and then claims repayment from the people living beside it, a citizen who thinks the claim unjust can complain to the Minister of Health. The department then comes to whatever decision seems equitable, and issues an order in the Minister's name which is binding and conclusive on all parties.¹ Again, if a local education authority says that one of the schools provided (say) by the Church of England is unnecessary, and accordingly refuses to maintain its efficiency²; or again if a dispute arises between a council, which proposes to build a new school of its own, and (say) the Roman Catholics of the neighbourhood, who propose to build a new school for the council to maintain: on all such occasions the Board of Education,

¹ Public Health Act, 1875, sec. 268.

² Education Act, 1921, sec. 29 (2). Cf. the case of Board of Education v. Rice [1911] A.C. 179. See also section 19 of the Act.

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usually after a local inquiry at which all the parties can be heard,¹ must determine the question. So, too, when the proprietor of an omnibus is aggrieved by the refusal of the Traffic Commissioners to grant him a licence, he can appeal to the Minister of Transport, under the Road Traffic Act of 1930. Further, when the District Auditor disallows some item of expenditure and surcharges it to the responsible members of the local authority, the Minister of Health may be asked to remit the surcharge; and this he frequently does.²

Though in such cases the citizen may be deprived of an appeal to the courts, justice administered by the departments has the immense advantage of being speedy and cheap: an appeal to the Board of Education, for example, need cost no more than three-halfpence for a stamp on the envelope. On the other hand, the officers of a department are not bound to follow the procedure of a court of law.³ They are not always under the obligation of giving either plaintiff or defendant an oral hearing; neither the officer of the department who holds the local inquiry (if there is one), nor the officer who advises the Minister how the dispute should be decided,⁴ has probably had any judicial training; there is no certainty that either of them will consider the questions in a judicial

¹ There were five inquiries of this kind in 1930.

² In 1930, for instance, twenty such appeals were decided by the Minister, and though the Auditor's decision was confirmed in sixteen cases, in all instances but three the persons surcharged were relieved of their personal liability.

³ See *Local Government Board v. Arlidge* [1915] A.C. 120.

⁴ The officer who holds the local inquiry is *not* necessarily the officer who advises the Minister.

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frame of mind ; and there is little likelihood that the Minister will declare, either before or after hearing the case, on what principles his judgment is based.

(d) Finally, there is the advisory function of the central authorities. The model schemes and by-laws which are issued from the departments can be disregarded by a local council only with such difficulty that they are more compulsive than advisory ; but in a number of ways a department such as the Ministry of Health can act as a store-house of information and advice. It knows, for instance, that 6% of the children born in 1930 died before reaching the age of one ; and that 2·14 lb. weight of refuse per head of population was collected each day of that year in the county boroughs. It can make comparison between the various types of local authority, and between the several members of each type, and between one year and another.

The principal ways in which this knowledge is put at the disposal of the local authorities are by circulars and memoranda, and by the personal advice of the inspectors, who periodically visit every council.¹ Annual reports are also published by some departments, in addition to shorter pamphlets and a mass of statistical information ; but apart from these means of communication, officers of local authorities can always ask for advice on any problem, or even go to London and discuss it in a private interview.

In conclusion, there are certain consultative bodies which assist in the advisory work of the departments. The Ministry of Health, for example,

¹ England and Wales are divided into some twenty districts for the purpose of this inspection.

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has an Advisory Committee on Water, another concerned with Insurance, and another with Pensions ; various consultative committees are attached to the Board of Education, and two advisory councils of this kind may also be mentioned, one for Broadcast Adult Education and another for Broadcasting to the Schools.

The central government, then, co-operates in a number of ways with the local governors, seeking in particular to secure two things : that no less than the national minimum of services which Parliament has prescribed shall actually be provided ; and that the money which the national exchequer contributes is well spent. In conclusion, it must be noticed that central departments have no general power of interference in local government, except perhaps in the fields of public assistance and police : they may never do anything which a statute does not specifically empower them to do. The electorate can choose whom it likes as member of a local council ; the councils can impose whatever rate they think to be necessary ; their permissive powers they can, and need not, use ; their internal organization is practically what they like to make it, and in the choice of officers they have a large measure of freedom. At all these points the central authorities have practically no power of interference, and the local governors are free. But the freedom of neither central nor local authorities extends beyond the limits of the law, and behind the law there are the courts of justice.

CHAPTER IX

JUDICIAL CONTROL

WE saw in the last chapter what parts are played by the central departments in local government. The co-operation of the courts is of a different kind.

State action in England can be said to consist of two stages. At the first stage (that of legislation) one organ of the state (the King in Parliament) expresses its intention, either in general or specific terms, that such and such services shall or may be provided in such and such a way. At the second, or administrative, stage these instructions are carried out through those various other organs of the state which together can be said to constitute the Administration. Both Government and Judiciary (which, as we saw, are the two main types of administrator) have to exercise discretion in administering the law ; for by its very nature the law is concerned with classes, and the business of the administrator is to deal with particular individuals and particular occasions. Yet whereas in exercising his discretion the governor has to consider, not only what are the facts of the particular case and what the law allows or commands, but also what in the public interest should be done, the administrator of justice has simply to consider the facts of the case and the rule of statute or common law which in his opinion applies to

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them. In practice of course it is often difficult to distinguish between cases in which a judicial decision has to be made, and those in which the decision of the administrator is only quasi-judicial or executive¹; and it is clearly true that at some stage of almost every administrative activity the discretionary power must be exercised in a judicial manner. But the co-operation of judicial courts in the work of government differs considerably from the co-operation of central departments, and this is particularly evident in the sphere of local government. In order to understand how the courts co-operate, we must first consider two results of the legislative activity of the state.

In the first place, it is generally speaking true that a man may in England do anything he likes provided that he does not offend against either the civil or criminal law. This means in effect that if a man enters into a contract with another man and breaks it, or if he wrongs another man² by interfering with his legal rights (as defined, that is, by statute or common law), he has offended against the civil law, and may be sued for damages, which he will then have to pay as a remedy, or means of restitution, to the other man. There are other civil remedies besides damages: in particular, in certain cases the court will issue an *injunction* forbidding a contemplated wrong, and the party disobeying the injunction will be punished. He offends against the criminal law, if he does any one of a number of prohibited acts (whether in doing them he interferes with another's legal rights or not): in this case, if criminal pro-

¹ See Report of Committee on Ministers' Powers (Cmd. 4060 of 1932).

² In this case he is said to commit a tort.

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ceedings are taken against him ¹ and he is convicted, he will be *punished* in body, liberty or pocket.² Thus the ordinary man-in-the-street may be said to be only negatively limited by the law : he may do anything which he is not legally forbidden to do.

But a corporate body (such as a local authority) is also *positively* limited. That is, it has no general power of doing what it likes ; it has no powers save those expressly conferred on it by the law. In considering the legal aspect of the actions of a corporate body it is therefore of the utmost importance to examine the statutes, charters or other legal instruments which confer on it its powers and to know the method followed by the law in interpreting such instruments,³ for, if an act is *ultra vires* (outside the powers) of the corporate body, it is not that body's act in the eyes of the law and the corporation will not be legally responsible for it.⁴ Moreover, if a corporate body is

¹ He may either be indicted, or proceeded against summarily, before a court of summary jurisdiction.

² A penal action, which has something in common with both criminal and civil proceedings, may be brought in certain circumstances ; but the tendency of modern legislation is against this method of procedure.

³ The law applies widely different principles in determining the extent of the powers of a chartered corporation and of those of a statutory corporation ; but, although many boroughs were originally created by charter, for practical purposes the principles governing statutory corporations have to be applied to them in nearly every case.

⁴ But cf. *Campbell v. Paddington Corporation* [1911] 1 K. B. 869, where a corporation was held liable for a tort which, although *ultra vires*, had been expressly commanded by the corporation. In any case, the members or servants of the corporation who have personally done the act in question will be personally responsible.

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doing or contemplates doing an *ultra vires* act, it can be restrained by injunction or otherwise. Thus, where a corporation had been given power only to establish wash-houses where people could wash their own clothes, it was held that it had no power to run a laundry where clothes would be washed by corporation employees, and could be restrained from spending the rate-payers' money for such a purpose.¹ A private individual would of course have been just as free to spend his own money on a laundry as on a wash-house or anything else.

And a corporate body is, like an individual, *negatively* limited. That is, if in doing an act within the sphere allotted to it, it injures the rights of any person or body, an action may be brought against it for damages, injunction or whatever else is the proper remedy.² But here it is to be noted that such a corporate body as a local authority is in a privileged position as compared with individuals, for it is always expressly given special power to do certain acts which would ordinarily involve liability and exempted from the ordinary liability for such acts. This is often necessary to enable it to perform its functions. If a private individual compelled another to hand over his money, even for so laudable a purpose as building a public wash-house or feeding the poor, he would be committing a wrong and he would be legally liable; but all local authorities have power to compel the local inhabitants to pay rates and commit no wrong by so doing. Again, a local

¹ Attorney-General v. Fulham Corporation [1921] 1 Ch. 440.

² The question of the *criminal* liability of corporations is obscure. They are certainly liable for some crimes.

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authority may be given power to take other persons' land (*e.g.* for slum-clearance), although such action would be wrong if done by a private individual. Again, a local authority is often given power to carry on operations (*e.g.* by setting up a gas-works or a power-station) which by their smoke or noise or smell injure neighbouring land; if a private individual did the same thing he would be liable to his neighbour for nuisance.¹ As before, it is necessary to examine the powers conferred on each particular corporation to ascertain in what matters and to what extent it is exempt from the ordinary rule of liability. It may, for instance, have been given an absolute power to set up a smallpox hospital, even if this should create a nuisance to the neighbours; or it may have been given power to do so only provided no nuisance should be thereby created.²

It is sometimes a boast of English lawyers that when a question in which public authority is involved comes before the courts the same fundamental principles of law are applied as in a case between individuals; that England has not (as most Continental countries have) special courts or a special system of law for public authorities, whether central or local. But (as will be understood from what has been said above) in the application of the ordinary law to the actions of a public authority two special rules may have to be taken into account: (i) the question may be raised

¹ Nuisances are either public or private. In the former case, an offender has committed a crime and must be punished; in the latter, his offence is civil, and he may have to make amends.

² Cf. *Metropolitan Asylums Board v. Hill* (1881) 6 A.C. 193.

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whether the action of the authority is *ultra vires*, (ii) the authority may have been specially granted exemption from the liability which an individual would incur for the same action. And there are (as we shall see later) other special privileges enjoyed, some by the central authorities, some by all public authorities, when they appear before the courts, so that the path of one who seeks redress from a public authority is often very difficult. It is obvious that wherever there are public authorities there must be numerous special laws concerned with them and them alone, and some writers are of opinion, not only that the boast of the lawyers, although theoretically it may be justifiable, does not give a true impression of the facts, but that it would be better if the facts were admitted and our administrative law codified as a separate system distinct from the ordinary law.

The courts also play another part in local government of a more constructive kind. Where an authority has not merely been given power to do a particular act but been placed under a *duty* of doing it, the courts have machinery to enforce the performance of that duty.¹ Thus in one capacity they act as a drag on the government, and interfere with ministers and local authorities alike whenever it cannot be shown to their satisfaction that a particular act can legally be done; in the other capacity, they have to further the public interest, and insist that both public authority and private person perform the various duties which the law has imposed upon them. On the

¹ The prerogative writ of mandamus. Also, it may be provided by statute that the omission to do a particular duty shall be treated as a crime punishable by a stated fine.

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one hand, therefore, they protect the individual citizen against all forms of arbitrary compulsion for which there is no legal authority ; and on the other they help both the central and the local governors to supply those services which the state has undertaken to provide.

There are two significant features of this whole arrangement. In the first place, it means that one and the same method is used to protect the liberty of the subject and to further the public interest ; and secondly that both these ends are sought by a division of labour between the judiciary and the governors of a particular kind.

Thus the citizen is protected by the law, as declared and enforced by the courts, against any public or private person who attempts to use force without legal authority. But the law, by granting exemptions to public authorities (by self-denying ordinance, as it were) excludes itself from a certain limited area within which the governors are allowed or commanded to use their administrative discretion, and from this area the jurisdiction of the courts is necessarily excluded, for there is (*ex hypothesi*) no law to enforce.¹ The citizen is therefore on certain occasions unprotected by the courts, and he must then make use of his second line of defence, namely the political : by the vote, and other devices of democracy, he should ultimately be able to control the government's use of its administrative discretion. In precisely these same two ways the public interest must be set forward : by the courts, using their judicial discretion to enforce the law, and by the governors,

¹ They can, of course, be asked to declare whether any particular matter falls within or without the limits of the area.

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using their administrative discretion in the manner approved by a majority of those who troubled to vote at the last election.

Whether or not the subject is adequately protected will depend on the ease with which he can appeal to the courts when he thinks the law has been broken, and on the efficiency of the political organization. Until the judicial machinery has been made less cumbersome and expensive than it is at present, and until Parliament has found more effective ways of controlling the unelected experts, it can hardly be said that the liberty of the subject is satisfactorily protected. Nor can the public interest be perfectly served except on two conditions: first, that the courts confine themselves to the declaration and enforcement of the law; and secondly, that the governors, by better organization of public opinion and by more scientific division of labour between elected members and permanent officials, are enabled to fulfil their trust. But neither public nor private interests would be endangered if the rules relating to public authorities were codified in a single body and called administrative law, or even if some part of the judiciary were entitled "the administrative courts."

What then is the judiciary, and in what particular ways does it affect local government? The map of England for judicial purposes is different from any of the local government maps described in Chapter II. In 1930 there were one hundred and thirteen boroughs in England and Wales, which had their own courts of Quarter Sessions, presided over by a paid official, the Recorder. After the abstraction of these boroughs, and of course London, the rest of the country could be divided into counties corresponding closely

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with the administrative counties, each having a court of Quarter Sessions constituted by all the Justices of the Peace for the county. A Quarter Sessions area is partitioned into Petty Sessional Divisions,¹ in each of which the local Justices of the Peace hold petty sessions, though some of the boroughs, which form petty sessional divisions of the county, have a paid professional lawyer, called a Stipendiary Magistrate, to preside over their courts instead of local Justices. All Justices of the Peace are nominally appointed by the Lord Chancellor ; but in fact, they are the men and women recommended to him either (in the case of a Quarter Sessions borough) by a special advisory committee, or (in the case of a county) by the Lord Lieutenant of the county, acting on the advice of a similar committee. Such a person as the mayor of a borough or the chairman of a district council is ex-officio Justice of the Peace.

Secondly, England and Wales are divided into seven Assize Circuits, in each of which Courts of Assize are held, usually three times a year, presided over by a Judge of the High Court. And thirdly, there is the system of County Courts.² So three maps, not one, are needed ; and London as usual requires separate treatment. All these local courts are subordinate, in various ways, to the Supreme Court of Judicature, which consists of the Court of Appeal and the High Court of Justice ; and the

¹ The administrative county of Somerset, for example, when Bridgwater (which, like the county borough of Bath, is a Quarter Sessions borough), has been cut out, is a county for the purpose of Quarter Sessions ; and it consists of twenty-nine Petty Sessional Divisions.

² In 1930 there were 444 County Court Districts, grouped into 55 circuits.

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High Court is further divided into three divisions : King's Bench ; Chancery ; and Probate, Divorce and Admiralty. From the Court of Appeal an appeal sometimes will lie to the House of Lords ; and this House completes the ordinary judicial machinery.

All these courts—Petty Sessions, Quarter Sessions, County Courts and the High Court—are concerned on various occasions with local government ; but the King's Bench Division of the High Court is far the most important of them for our purpose. Besides the ordinary courts, however, there are certain specialized courts which are solely concerned with cases affecting public authorities. One tribunal of this kind (consisting of one person selected from a panel of official arbitrators ¹) determines any question of disputed compensation which may arise when a landowner has been compelled to surrender his land. Assessment committees are also judicial bodies, though they partly consist of members of the local authority ; and so are District Auditors, though they are appointed by the Minister of Health ; for neither are the former responsible to the local authorities, nor are the latter responsible to the Minister : both (in theory) have simply to enforce the law, and from both there is appeal to the High Court in certain cases. The Minister of Health and the Board of Education, on the other hand, are *not* properly considered as part of the judicial system, although much of their work can be called judicial, and although in some cases appeal can be made against their decisions to the High Court on a point of law.

¹ Appointed by the Lord Chief Justice, the Master of the Rolls, and the President of a body called the Surveyors' Institution.

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How then is this judicial machinery brought into play? In the first place, it never starts into action of its own accord: the initiative must be taken by a private citizen or the Attorney-General (acting, perhaps at the instigation of a private citizen, on behalf of the general public), or by a local authority, or by some Minister or central department, before the courts can move. The consequence is that innumerable cases in which the courts might well be called on to co-operate are never brought to their notice, often because litigation is expensive and the aggrieved party poor, and sometimes because a local council is unwilling to make itself objectionable by setting the law in motion against a particular resident. In this respect the action of the courts is the same when public authorities are concerned and when they are not. But there are several differences of procedure between cases of the one kind and the other. (a) Speaking generally, it may be said that acts done by departments of state are acts done by the Crown. But the Crown cannot be sued in any court. A special process, by Petition of Right, may sometimes provide a remedy for breach of contract or detention of property, but never for a tort. When a Petition of Right cannot be brought, the only remedy available to the injured party is to sue the Crown servant who is the actual wrong-doer, and he may be a poor man and quite unable to pay the damages. Though in practice the Crown usually satisfies a successful plaintiff on such occasions, the citizen is clearly at a disadvantage in this respect, compared with the citizen of a continental country, such as France. On the other hand, statutes have provided that certain departments may sue and be sued in

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their own name. Such provisions do not necessarily make the Minister or department liable for wrongs done by subordinate officials, but the Ministry of Transport Act of 1919 provides¹ that the Minister may sue and be sued in respect of matters arising out of his department by the name of the Minister of Transport, and shall be responsible for the acts and defaults of the officers of the Ministry as if they were his servants. The Commissioners of Works have also been held liable for a contract made on behalf of the Crown²; and the question of liability has arisen in several cases concerning the Air Council.³

The central departments enjoy various other advantages besides this limited immunity. Except in revenue cases and Petitions of Right, the Crown neither pays nor receives costs: though here again it has become a practice to award costs to the successful party in proceedings of a certain kind.⁴ Again, the Crown, unlike a private individual, cannot be compelled to disclose documents. And apart from these legal advantages, the Crown has such inexhaustible financial resources that it need not hesitate, as most private persons do, to appeal to the House of Lords when the decision of the other courts has been unfavourable.

(b) Almost the only efficient weapon with which a local authority or private person can attack the central government is the particularly cumbersome and archaic procedure of the prerogative writ.⁵ An

¹ Sec. 26.

² *Graham v. Commissioners of Public Works* [1901] 2 K.B. 781.

³ *Rowland v. Air Council* (1923) 39 T.L.R. 228.

⁴ See Wade and Phillips, *Constitutional Law*, p. 232.

⁵ A fair indication of the complexity of this procedure is given by the language which has to be used in expressing

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action of this kind originates in the issue of a writ by the High Court (summoning the other party to appear), and the applicant must first show cause why the writ should be issued : whereas the writ which must be obtained by the plaintiff before an *ordinary* action can be brought, can be obtained as of right from any court of law without argument.

(c) Thirdly, a citizen can very seldom succeed in bringing a civil action for damages against a local authority ; for he must not only show that the local authority has failed to perform its duty, but also that the duty was owed to him, not merely as a member of the general public, but in his private capacity.¹ If the duty which the council fails to perform is only owed to the public, then judicial proceedings cannot be taken by any private person, and any fine which the council may have to pay will not benefit the individual citizen. A woman, for example, sought to recover damages for injuries caused by falling in the snow which the local authority was bound by statute to remove ; but it was held by the court that the duty was

the result of an action by prerogative writ. *The Times* reported the final decision in the Yaffe Case as follows : " The House of Lords by a majority (Lord Russell dissenting) allowed the appeal by the Minister of Health against an Order of the Court of Appeal setting aside an Order of the Divisional Court, whereby a rule nisi for certiorari calling on the Minister of Health and the Liverpool Corporation to show cause why an order of the Minister confirming the Liverpool (Queen Anne Street) Improvement Scheme 1925 should not be quashed was discharged." An admirable account of procedure by the prerogative writs of Prohibition, Certiorari and Mandamus can be found in W. I. Jennings, *Local Government Law*, ch. 7.

¹ *Boyce v. Paddington Corporation* [1903] 1 Ch. 109.

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owed only to the general public ; and the woman's suit was therefore unsuccessful.¹

(d) Fourthly, the effect of the Public Authorities Protection Act of 1893 is that no one may question in the courts any act or omission of a local authority after six months have elapsed, except by the special procedure of the prerogative writ, which in practice is very seldom available. A further consequence of the Act is that if a local authority is attacked in the courts and successfully defends itself, the person who started the attack can be made to pay costs of an exceptional kind. The existence of this Act alone would certainly give grounds for the suggestion that in England as elsewhere the law relating to public bodies is not the ordinary law of the land.

(e) Again, if a man is arrested on suspicion by a policeman to whom a warrant has been issued by any Justice of the Peace, he cannot question the legality of the act, even if the Justice was mistaken.² Further, whereas normally the master can be sued for wrongs done by a servant, no one can sue the local authority for wrongs done by a policeman, for the courts have held that a policeman is *not* the servant of the local authority.³

With these important exceptions, the citizen is as free to set the judicial machinery working when he is displeased with a local or central authority, as when he is displeased with a private person. All the aspects of local government which have been considered in previous chapters may provide occasions for the intervention of the courts, on behalf either of the individual or the general

¹ *Saunders v. Holborn District Board* [1895] 1 Q.B. 64.

² Under the Constables Protection Act, 1751.

³ *Fisher v. Oldham Corporation* [1930] 2 K.B. 364.

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public. If a local authority provides a service (say, a laundry) which no Act of Parliament allows it to provide,¹ or if it fails to perform a duty (such as sewage-disposal) which Parliament has imposed, the courts can be called upon to co-operate, and will compel the council to keep within the upper and the lower limits of its authority. Further, an appeal can be made to the courts with similar effect if a council, even within the prescribed limits, is thought to have made improper use of its discretion. If it pays its servants an unreasonably high wage² or is thought to have broken a contract with one of its officers³; if it refuses to grant proper compensation, or uses its powers in such a way as to commit an unauthorised nuisance,⁴—if it offends, or is thought to have offended in any of these ways, the courts can be asked to declare the law and enforce it.

But these same courts can still more easily be called on by the local authority, to make offending citizens obey the law. If anyone refuses to pay their rates, or to send their child to school, or to sell their land at the council's bidding; and again, if a man persistently overcrowds his house with lodgers, or keeps animals there in such a way as to be a nuisance and injurious to health, the local authority can obtain the co-operation of the courts and, as the case may be, either stop him or make him pay.

So too the Minister of Health, and any other central authority, can make use of the judicial

¹ *Attorney-General v. Fulham Corporation* [1921] 1 Ch. 440.

² *Roberts v. Hopwood* [1925] A.C. 578.

³ *Brown v. Dagenham U.D.C.* [1929] 1 K.B. 737.

⁴ *Metropolitan Asylums Board v. Hill* [1881] 6 A.C. 193.

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machinery. Some statutes (for instance, the Public Health Act of 1875, sec. 299) make it especially easy for the Minister by providing that he can obtain the prerogative writ of mandamus from the High Court and so compel a local authority to do its duty,¹ without any of the doubts and difficulties which usually complicate that mode of procedure.

Another statute (the Audit (Local Authorities) Act of 1927) enables the Minister of Health to refer a question to the courts (concerning the disallowance of payments made by local authorities); and thus the advice of the judiciary is made directly available, which otherwise can only be obtained if an ordinary action is brought as a test case.

In conclusion, then, the judicial machinery is brought into operation by any one of a number of persons. It declares the law; it prevents either citizen or public authority from breaking the law with impunity, and it compels both private and public persons to perform their legal duties. Finally, by its very existence it exercises a continual influence both on the citizen and the government; for the knowledge that machinery exists for the enforcement of the law discourages potential law-breakers almost as effectively as the machinery itself.

¹ In that case, to provide efficient sewers.

CHAPTER X

HISTORY

THERE are various historical questions to consider : how the areas of local states have grown in size ; the gradual consolidation of local authorities, and the changing relations of town and country ; the conflict between traditions of paternal responsibility and privilege, and the growth of representative institutions ; how the committee-system developed in contrast to the parliamentary method of government ; and finally, how labour has come to be divided between central and local authorities. But there is another question of even greater importance : by what process have protection, welfare and convenience emerged as the local government services ? And that is the only aspect of the history to be examined in this chapter, for it would clearly be impracticable to try to consider so wide a field from more than one point of view.

The logical connection of a policeman's function with enforcement of the law sufficiently explains why that service has not been left to private enterprise or voluntary organization ; but the fact that it is provided by local and not central government is mainly due to an historical cause. With the help of various administrative courts of justice (such as the Court of Star Chamber in London, and the Councils of the North and of the Marches in other parts of England), the Tudor and Stuart

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kings had succeeded in using as instruments of their will the local justices of the peace (who were first appointed in 1360), and through them the local constables.¹ This species of tyranny was so little liked by those who experienced it that after 1688, when the Stuarts were expelled and the Star Chamber finally abolished, police (and also the administration of certain forms of justice) became local government services again, and justices of the peace, who were now no longer subject to central control, became the chief local authorities. Justice itself ceased to be a part of local government, in the boroughs in 1835 and elsewhere in 1888, but the police have remained under local control ever since, though Parliament in 1856 placed all responsible local authorities under the supervision of a central department, and insisted on the employment of a paid police force in every part of the country.²

The history of the modern welfare services begins in 1601. In the Middle Ages (generally speaking) the guilds had looked after any of their members who were too poor or too sick to look after themselves, and the Church had done something for other destitute persons. When the guilds disappeared, and the monasteries were dissolved, poor people became a nuisance to the rest of the community which had somehow to be removed: especially since the growth of sheep-farming and other changes in the system of agriculture had

¹ Constable (from the Latin *comes stabuli*, the lord of the stable) and police-man (from the Greek *politeia*, meaning the art of city-government) can to-day be taken as convertible terms.

² In London (except within the narrow boundaries of the city) police became a function of the central government in 1829.

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considerably increased the number of the unemployed. The removal of this kind of nuisance was not likely to be undertaken by private enterprise, and as voluntary organization had failed, the sphere of state activity had to be extended: Parliament accordingly passed the Poor Law Act of 1601, and public assistance became a function of local government.

In the course of the next two centuries the nature of this service changed, for local authorities became interested in the relief of destitute persons, and not only in the removal of the nuisance caused by them. The practice arose (for instance) of giving relief to the able-bodied pauper in his own home, and graduating the amount of relief by reference to the number of his children, the wages paid him by his employer, and the price of bread.

With the development of the industrial revolution in the eighteenth century, there was a great increase of population; and as new urban areas sprang up, conditions of life became so unhealthy that a fresh nuisance began to need abatement. Something was done by local Acts of Parliament, which allowed boards of commissioners to be set up in various places and gave them power to collect money compulsorily from the local inhabitants; but nothing was attempted on a national scale until Parliament had been reformed in 1832. Demand for an extension of state-activity then began to grow: the gruesome reports of various Royal Commissions, and the further evidence of statistics, which became available after the Register Office had been set up in 1836, added strength to the arguments of sanitary enthusiasts such as Chadwick; and the positive nuisance of unhealthy conditions was made the more evident by violent

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epidemics of cholera, which did not confine their attacks to any one part of the community.

But it was because the state had already undertaken to relieve destitution that it finally had to extend its boundaries into the field of public health. After the Napoleonic wars the cost of administering the poor law had so far increased that a drastic reform had to be introduced in 1834. But by 1848 Parliament was ready to believe that the nuisance of destitution would not be satisfactorily abated unless insanitary conditions of urban life, which were largely responsible for its growth, could be removed. Clauses Acts, which made more generally available the powers granted by local Act to particular places, had done something but not enough. The Public Health Act of 1848 was therefore passed, in certain cases compelling urban local authorities to provide for the abatement of nuisances and the supply of pure water, and setting up a General Board of Health in London to supervise the work.

These principles were carried a step further in the early seventies: the connection of poor law and public health was recognized by the creation of a single department, the Local Government Board, for the supervision of both types of local activity; and the statutory duty of providing public health services, which had already been laid on certain urban authorities, was now imposed on rural as well as urban authorities in every part of the country. Thus there had been four stages of development: particular authorities were first allowed to experiment; these powers were then made generally available; certain authorities were later compelled to do what all were allowed to do, and finally the obligation was made general.

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Meanwhile the nature of the public health services changed, as the nature of the poor law had done. As more and more people were given the vote, personal benefit, and not merely the removal of nuisances, came to be expected of the local authorities. The community which had been interested in the sick man only as a source of danger, began to take an interest in curing him too. This development was carried a further stage forward by legislation in the first ten years of the twentieth century which inaugurated a system of old-age pensions and schemes of health and unemployment insurance ; for though the part given to local authorities in the administration of these new services was small, the context within which local government had in future to work was considerably modified by these changes : one of the purposes of the state was now definitely to help the citizen in his individual capacity. Again, after experiments had been tried in London and elsewhere, local authorities were allowed after 1890, and still more after 1909, to build new houses for the poorer citizens, as well as providing for the sanitation and inspection of other houses. Statutes were also passed in the same spirit, enabling poor people to acquire their own houses with money borrowed from the local authority, and to hire allotments and small-holdings by similar means.

But it was not until after the Great War that house-building became an important part of local government. Few houses had been built during the war : high building costs and the attitude of the building trade made it unlikely that the deficiency would be supplied by private enterprise. Parliament therefore in 1919 began to encourage the house-building activity of local councils, and

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continued to pursue this policy with varying intensity until 1931.¹ By 1929, the state had assisted the building of some 1,250,000 houses, half a million of which had been built through local authorities and the rest by private enterprise.

But apart from housing, the war profoundly influenced the general development of local government; for it showed that in war-time at any rate the nation had an interest in the health of individual citizens: tuberculosis, venereal disease and infant mortality were accepted as evils which the state could help to combat. The local authorities had already ceased (as we saw) to be interested only in man's environment; and when responsibility for these new services was entrusted to them by Parliament, the effect was only to emphasize the tendency of local government to be concerned personally with individual men.

This tendency had meanwhile been strengthened continuously since 1870 by the state's activity in the field of education. Here again the state only took action when private enterprise and voluntary organization had failed, and when the demand had become effective through extension of the franchise. The so-called public schools (which were in the hands of private enterprise and had nothing to do with the state) and other institutions of the kind were making education available for those who could pay for it, but did nothing for those who could not. Hundreds of years earlier, the monasteries and medieval guilds had undertaken some part of this social service, just as originally they had cared for the destitute; but when they failed, nothing effective seems to have taken their place until the nineteenth century; for an uneducated

¹ See Ministry of Health Report, 1930-1931, p. 277.

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nation did not constitute a sufficiently obvious nuisance, and so there seemed to be no occasion for the state to intervene.

By the beginning of the century Sunday schools had been started here and there, and such bodies as the Society for the Promotion of Christian Knowledge were already attempting to educate the poor. In 1808 the Nonconformists, and in 1811 the Church of England, founded societies with a similar intention; their success was sufficient to induce the state, in 1833, to give them a grant from national revenues; and in 1839 a committee of the Privy Council began to supervise the spending of this grant, which had now become annual. This central department developed a system of inspection and issued numerous regulations from time to time, which were first codified in 1860; but it was not until 1870 that Parliament found it possible to make education a part of local government. Special local authorities were then set up in places where adequate schools did not already exist; and by 1891 a system of free and compulsory education had been established throughout England.

But certain peculiar characteristics were inherited from the past: the only education provided was the elementary type; the only people for whom it was intended were the children of the poor; the method of its provision was based on a compromise between a deliberately secular state and the sectarian interests of various religious bodies; and the local authorities were subject from the start to the detailed and continuous control of a central department. And there have been at least four important consequences. In the first place when other kinds of education, whether technical

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or secondary, came to be provided, they formed a separate system. The task of co-ordinating these various types, which was undertaken by Parliament in 1918,¹ has proved to be exceedingly difficult; the Hadow Report of 1928 amplified certain intentions of the 1918 Act and suggested a possible method of co-ordination, but in 1932 many difficulties have still to be overcome. Secondly, there is a great gulf fixed between the public and the private systems of education: it is extremely rare for a child to pass from one to the other in the course of his schooling; and English education, unlike the American or the continental, therefore tends for better or worse to emphasize distinctions of class. Thirdly, no progress can be made beyond a certain point in the development of education unless negotiations between the state and the churches are successful: in 1930 and 1931, for instance, Education Bills had to be abandoned largely because this condition was not fulfilled. And finally, the detailed control of the central department has meant that much of the energy, money and time of those engaged in local administration of the service has been almost inevitably wasted, however much benefit the children of certain areas may have received thereby.

When education became a regular part of local government, people were naturally still further encouraged to regard a local authority as the provider of personal services to a particular section of the community. This encouragement was not

¹ The preamble to the Act (which was re-enacted in consolidated form in 1921) declared Parliament's intention of establishing a single "national system of public education available for all persons capable of profiting thereby."

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diminished when Parliament decided not only that education was wasted unless the child was physically capable of being taught, but also that at school there was an excellent opportunity of improving the children's health; for education authorities were then given permission (in statutes passed between 1893 and 1909) on the one hand to provide special schools for the deaf, dumb, and epileptic, to regulate the employment of children and prevent cruelty towards them; on the other hand, to feed them and to give them medical inspection and finally medical treatment too.

We have seen that water began to be supplied as part of the public health service after 1848; but this was not the first service of convenience to be provided by a local authority, for roads and bridges had already been undertaken.

The inhabitants of a parish had for hundreds of years been compelled to maintain the highway; for this was something that almost every member of the community wanted and that anyone could freely use. After 1555 the service was provided by a system of forced labour in each parish: everyone was expected to contribute so many days' work each year, and no paid officials were employed. But by the middle of the eighteenth century it was recognized that this system had broken down. Long-distance travel by stage-coach, which started a hundred years earlier, had already proved the parish to be too small an area for highway-administration; but it was the new methods of road-construction discovered by Metcalfe, Macadam and Telford that finally led Parliament to recognize the inefficiency of the local arrangements and to allow regulated private enterprise in the form of Turnpike Trusts

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to enter the field.¹ Various bodies of local highway commissioners were also set up during the eighteenth century ; but it was in 1835, when a Highways Act enabled parishes to appoint a paid surveyor, that the modern local government service began to be provided. By 1894 Turnpike Trustees had been allowed to disappear into bankruptcy ; and all the roads were under the control of elected councils. By the year 1911 expenditure on roads (other than out of loans) had reached a figure of £15,580,000 ; by 1921 this figure had risen beyond £42 million, and in 1925 had reached £50 million. Expenditure out of loans was respectively £1,716,000, £6,578,000, and £10,316,000 in those years.

This development encouraged local authorities to provide other services of convenience, such as water, gas, tramways and electricity, which all require the laying of pipes or lines that cause the surface of the road to be disturbed from time to time. But there were other more fundamental reasons for the development of these municipal trading services.

First, the consumer was unwilling to run the danger or incur the expense of giving private enterprise a free hand in the provision of certain services: water, for instance, seemed to be not only essential to public health, but of such a kind that it could not be provided economically except by a monopolist.

Secondly, no satisfactory method of regulating private enterprise could be found. Attempts were made to control both the profits of gas and electricity companies and the prices charged to the consumer,

¹ Some 450 separate Acts of Parliament were passed between 1760 and 1774 for this purpose.

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by means of a sliding scale ; again, the first General Tramways Act (of 1870) provided that any private company which was allowed to run trams must offer to sell the undertaking to the local authority at the end of twenty-one years, and the first Electric Lighting Act of 1882 contained a similar provision. But these attempts either failed to safeguard the consumer's interests adequately, or else had so discouraging an effect on private enterprise that no development of the service followed. In 1870, for instance, before the Tramways Act was passed, powers had already been applied for by 27 companies, and 500 miles of tramway had been planned : but by 1880, though all the larger American cities had by that time been provided with a service of trams by regulated private enterprise, only some 400 miles of tram-lines had been laid in England. The difficulty of regulating private enterprise provided a strong argument in favour of municipal trade, and many local authorities were faced with the alternative either of foregoing the benefits of a service altogether or supplying it for themselves.

The third reason was the Great War. The dangers of exploitation at the hands of private enterprise were demonstrated on the grand scale ; and for the first time since the Middle Ages, when the regulation of trade and industry seem to have been among the principal interests of local government, the state was forced to include within its sphere such things as food, milk, coal and transport. For the same reason, local authorities were encouraged to undertake certain new activities, and when the war was over, were allowed to profit from experiments which had proved successful. Birmingham, for instance, in 1919, was allowed to

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start a municipal bank, in place of the savings bank which had been carried on successfully during the latter part of the war; and other cities have since then been given similar powers.

By 1930, in consequence of these and other causes, nearly 70% of the county borough councils were supplying their own water, and about 30% of the other urban authorities and 45% of the rural district councils were doing likewise. By that year the number of urban authorities owning gas, trams, and markets respectively had in each case reached the neighbourhood of 160.¹ Further, nearly 70 local authorities were running a service of motor omnibuses. Some 370 were supplying electricity at this time, and more than 60% of the units generated throughout the whole country came from public authorities.

In conclusion, there are certain figures which indicate one aspect of the general growth of local government since the eighteenth century. In 1803, when the population of England and Wales was under nine millions, a sum of money seems to have been spent on local government (other than out of loans) which was equivalent to 12*s.* 3*d.* per head; in 1901, the population was 32½ millions, and the corresponding figure £1 8*s.*; and by 1926, when the population had become 39 millions, the figure was £6 6*s.* 5*d.* The amount of commodities which the pound could buy was not the same at each of these dates, but the figures have a certain significance. Whether the happiness or suffering of the community has proportionately increased is a question of which we cannot even guess the answer.

¹ That is to say, 47% of the boroughs, or about 14% of all urban authorities.

CHAPTER XI

CONCLUSION

It is now possible in conclusion to return to the consumer of local government services. He was considered at the beginning of the book, but since then the subject has been treated mainly from the point of view of the producer.

There are two distinct kinds of consumer, the rural and the urban. The former kind has two main types, the well-to-do and the wage-earning,¹ while the latter perhaps is best divided into four : the residential consumer, the industrialist, the shopkeeper and the wage-earner. This classification is of course simply a matter of convenience : there are no clear divisions between the rural and urban, or between any of the sub-divisions ; but it may serve a useful purpose to classify them in the way suggested, so long as the obvious fact is not forgotten, that no two consumers receive precisely the same advantages or disadvantages from local government.

It is true that everyone living in the country has an indirect interest (whether he knows it or not) in the whole of local government ; and there are some local government services which affect more or less all kinds of consumer alike : pro-

¹ Those who do, and those who do not, earn an income of more than £156 a year may be taken as roughly constituting these two classes.

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tection from civil disturbance and from fire ; the provision of pure water ; the prevention of nuisances (such as advertisements and smoke), and the removal of them when they occur (sewage and household refuse, for instance). But it can be said with some confidence that the rural consumer (that is to say, the inhabitant of any area which is not an urban district or a borough) has less local government, for better or worse, than the urban consumer. With the exception of land-drainage and the various agricultural services, there is no department of local government which touches the rural and not the urban consumer, whereas numerous services¹ are provided in urban areas and nowhere else.

Further, within the class of rural consumer, the well-to-do receive definitely less direct benefit from local government than the wage-earners. The well-to-do, having more property which needs protection, and making more frequent use of the roads for travel by motor-car, benefit more directly from the police and highway departments² of the local authority ; but on the other hand the wage-earners benefit from maternity and child-welfare, education and the other services which they receive as members of an age-group, from all the services which are available when they become members of a misfortune group (public assistance, mental deficiency, asylums, hospitals, venereal disease, tuberculosis and the rest), from the various activities by which the local authority tries to better their environment (building and

¹ For instance, baths, fire-brigades, and all forms of municipal trade.

² But the roads have made possible, by encouraging omnibuses, the vastly increased mobility of rural wage-earners.

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inspecting houses ; providing baths, libraries, recreation grounds, allotments and small-holdings ; and offering instruction in bee-keeping, poultry-rearing, dairy-keeping and stock-raising), and finally from the services of convenience : such as the supply of electricity, which will in time make available for the villager light and power which was formerly found in rural areas only when a rich man could afford to generate his own supply. In these respects at least the rural wage-earner seems to benefit more directly from local government than the well-to-do.

When we consider the disadvantages of local government, we find again that the former type is more fortunate than the latter. The wage-earner, perhaps, finds his freedom curtailed by the rule of compulsory vaccination, the necessity of making his children attend school regularly, and the unwanted visits of a sanitary or medical officer, which may lead to the demolition of his home or to seclusion in the isolation hospital. He may resent too the regulation which makes him carry a light on his bicycle. But the well-to-do suffer much more serious hardship : they find that their land is to be compulsorily acquired by the local authority for a variety of reasons ; they have their cattle slaughtered when foot-and-mouth disease attacks the district, though they receive compensation ; and in a number of other ways their freedom of action is subject to control. Yet on the other hand, as was suggested elsewhere, the rates are a proportionately heavier burden on the wage-earner, for the regressive nature of the tax is emphasized by the fact that occupiers of agricultural land and buildings are not, as such, rateable at all.

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In an urban area where consumers of the residential, industrialist, shopkeeper and wage-earning type are found, each type is likely to enjoy some advantages and suffer some disadvantages peculiar to itself, in addition to those which are common to all. The residential well-to-do receive no direct advantage from the welfare services provided for the benefit of individual men and comparatively little from those which better man's environment (for they do not use the public baths or libraries; they do not ask for allotments; and they do not need the public park as much as the poorer citizen needs it, because they have their own gardens and can escape into the country more easily); but they benefit directly from roads and artificial light. They suffer disadvantages similar to those suffered by their rural counterpart, and are especially liable to resent the local authority's sanitary actions if they own property in the slum-quarter of the city. Further, their property is probably assessed at a high level, for they enjoy no special privileges in this respect; so that their contribution to the rates is proportionately high.

The industrialist, on the other hand, benefits at almost every turn. He pays rates on specially favourable terms; usually he obtains electric and other forms of power at a reasonable price, and the roads provide him with a cheap and rapid means of transport for his goods. His concern for the workmen he employs may be considerably relieved by the activity of the local authority (in providing them and their families with education, housing and other services); and he relies on the same authority for keeping from starvation (by public assistance) any man or woman whom he dismisses

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from his employment. It is true that he may find the by-laws inconvenient, when they prevent him from fouling streams and sewers with trade-effluent or the air with black smoke, when they force him to provide his workmen with privies, and with air of comparative coolness and purity ; nor does he benefit personally (in the capacity of an industrialist) from any of the welfare services. But on the whole he is the most fortunate of the citizens in his relation to local government.

The shopkeeper is the least fortunate. Perhaps he obtains electric light for his shop-windows from the local authority at a reasonable charge ; the municipal omnibuses and trams bring him customers (though at any moment his trade may be seriously interrupted, if the council chooses to make the street, where his shop is, a one-way street) ; protection provided by the police is particularly beneficial to him, and services such as the removal of refuse are useful too ; but otherwise he has more reason to curse local government than to bless it.

Perhaps he cannot justly complain if his property is assessed highly for rating purposes ; for the rateable value is only high because the property is placed where the profits of the shop are likely to be high. But the nature of his business may be such as to require extensive shop-space (for instance, if he sells motor-cars) ; the rate he pays may then bear little relation to his profits, and no de-rating provisions apply to him. Secondly, he is always liable to interference. He may not be able to start business at all unless he can obtain a licence from the local authority (if he wishes to set up as a knacker, say, or fell-monger) ; and this licence may be given only on condition that

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he complies with a number of tiresome regulations. In any case, he will be made to close his shop for half a day in each week, and all Sunday, and to keep it open only between certain hours on other days. At any moment an inspector may enter the shop, snatch samples from the counter, and after analysis order the offending goods to be destroyed; later too the local authority may take criminal proceedings against him. He is not free to advertise where or how he likes; and in the end he *may* find (though in 1932 it would be quite exceptional) that the local authority has obtained leave from Parliament to compete with him in the sale of those very goods which it is his business to sell, and moreover (since the council has behind it the power of collecting rates from him and the other citizens) on a scale against which he cannot possibly compete. These are undoubtedly some of the reasons which explain the readiness of shopkeepers to undertake the responsibilities of local governor, and the fact that they are so well represented on almost every urban council.

Finally, there is the wage-earning type, which is worthy of more detailed consideration, for it contains "the municipal man" himself. This imaginary person begins to take advantage of local government soon after his conception; for his mother is visited and urged to attend a welfare centre during the pre-natal period; and if necessary she is supplied in her own house with free milk, a trained midwife and a doctor during her confinement. The child's birth is brought (either by his father or the doctor) to the notice of the city medical officer within forty-eight hours. This brings a health visitor into the house again, and

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also the vaccination officer, unless the conscientious scruples of either parent are too great. For the next five years the municipal child is taken regularly to the infant welfare centre, at first only to be weighed and looked at, and later perhaps to spend the day-time while the mother is at work. Since the child is declared by the doctors at the clinic to be neither deaf, dumb, blind or mentally defective, it gets no advantage from the special provision which the city makes for children of those kinds ; but (by catching measles, whooping-cough, and scarlet fever in turn) he receives the benefit not only of several visits from the sanitary inspector, but also of transport in the city ambulance and a free bed in the isolation hospital.

At the age of five the child passes from nursery school to junior school ; for his father cannot afford to educate the child privately, and there is therefore no alternative. His attendance at school is not regular, and the father receives written and spoken reprimands ; but the offence is not sufficiently aggravated for the local authority to take legal proceedings. At school, he is not only taught reading, writing, arithmetic, history, geography, French and undenominational religion (in a class containing between forty and fifty boys and girls), but his eyes and teeth are inspected, found wanting and given treatment ; he is provided with a free meal each day he goes to school and sometimes in the holidays too, for the parents can demonstrate their inability to pay ; he is taught swimming in the city's public baths ; he has free rides on the tram from his home to the park on the outskirts of the city ; occasionally he goes camping in the summer holidays (under the auspices of the education department), and he

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again enjoys the advantages of the isolation hospital during an attack of diphtheria. His life is frequently saved by policemen at the cross-roads between his home and the school.

At the age of 11, he sits (however little he or his father may wish it) for a general examination in the subjects that he has been taught at school ; but he is told afterwards that his ability does not seem to be such as to justify his father in spending money on secondary education, and that he certainly cannot expect the scholarship or free place which would relieve his father of that expense. So he proceeds forthwith from the junior to the senior school, where he stays till the end of the term in which he reaches the age of 14. The curriculum gives him a chance of selecting within a limited group of subjects, and includes practical instruction in basket-making and carpentry. From this time onward he makes increasing use of the public library, where he can find out from the librarian in the juvenile department what books he should read, and borrow others from the lending department ; later he starts to make regular use of the room where daily and weekly newspapers are to be found. After buying a violin, with the help of a special fund, he learns at school to play it, and finally performs at a children's concert in the Town Hall. He also swims (in the municipal baths), and plays cricket (in the municipal park) for his school, which takes part regularly in the league competitions, organized by voluntary bodies.

He is uninterested in academic or commercial subjects, so when he leaves school at 14, he joins a continuation class in engineering at an evening institute ; and since he applies for a free place

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within four weeks of the beginning of the session, this costs him nothing. Meanwhile the local Juvenile Employment Department has interviewed him, and with the help of the voluntary after-care committee attached to his school, has obtained him a post as apprentice to a motor manufacturing company. He continues to play games in the park, but he now has to pay for his own ticket on the tram. From time to time he goes to the public gallery of the council chamber and listens to the debates at council meetings; but he has no local government vote (for he still lives in his father's house), although at the age of twenty-one he has been registered as a parliamentary elector. However, he also acquires the habit of attending dances of various kinds in the Town Hall, and after a brief courtship he is able to marry, for he has the good fortune to be allotted one of the non-parlour-type houses which the council has recently built. The rent which he pays the council is reasonable enough, for it is an uneconomic rent, thanks to the subsidy which the Exchequer grant and the rates provide. Meanwhile the city not only supplies him with electric light in his house, gas-cookers, gas-fires, and a dust-bin (which is emptied of the household refuse two or three times a week), but also brings to his door a constant supply of water from the hills some fifty miles away (for which he makes direct payment according to the amount consumed), and a bus and tram service, which takes him to work and home again each day.

He is now registered as a local government elector, and his wife as another, though they do not often have an opportunity of voting, as an election is seldom contested in the ward where

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they live ; and for the first time he has to pay rates. Now that he is a local elector, he may be also summoned occasionally to serve on a jury, and this means that very occasionally a few days have to be spent in a court of law.

Since reaching the age of 16, he has been insured against sickness, disablement, etc. (as member of a Provident Society, approved officially under the National Health Insurance Scheme), and against unemployment under a similar scheme ; he subscribes a portion of his wages each week and draws benefits from a fund, which is fed not only by people like himself, but also by his employers and by the national exchequer. He is helped in this way from time to time, but without troubling the city council, which has nothing directly to do with him in this respect. A time comes, however, when he has been out of work so long that he can no longer draw unemployment insurance benefit,¹ and his means are so straitened that he has to apply to the local authority for public assistance. This he receives each week, and when his wife gives birth to a child the relief is proportionately increased. The family continues to live at home, but at any moment the Relieving Officer may call to see how the money is being spent, and if he reports to the local authority that the municipal man maintains too high a standard of living, the relief will probably be cut down. Both husband and wife continue to vote whenever there is a contested election, but when the man is approached

¹ Under the temporary provisions of Orders in Council made in 1931, there is a period during which he draws "transitional benefit" from the Exchequer, after the insurance benefit has ceased, and this he receives at the discretion of the local authority.

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by his friends in the Trade Union and asked to stand as a candidate himself, he has to refuse, for he is disqualified by the public assistance which he has been receiving.

He is now given a post by his Trade Union as local organizer, and the pay which he earns in this way makes it no longer necessary for him to apply for public assistance ; so that twelve months later he is able to stand for election to the city council. There would be little chance of success if he stood as candidate in his own ward (where an election is seldom contested), but he is nominated as candidate in another ward, and elected councillor.

He then finds himself a member of the public assistance committee, and shares in the work of determining what relief is to be given to the various applicants, in the light of his own experience. Later he joins the education committee (which enables him to make good use of his early experience as a schoolboy), and eventually the finance committee, on which he helps to frame the city's annual budget. After some years, when the Socialists gain a majority in the council, he becomes chairman of the public assistance committee, and carries out a policy in that field which so well satisfies his party that after three years, when he has to resign that chairmanship, he becomes chairman of the finance committee. In this capacity he is not unlike a local chancellor of the exchequer, for his party is in a majority on the committee and in the council, and his advice is usually followed by both those bodies. In due course he is elected mayor ; and during that year a Trade Exhibition is organized under his chairmanship with such

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success that the city is honoured with a royal visit, and the mayor with a knighthood. After this he becomes a Member of Parliament and ceases to be a municipal man, though he is later co-opted to the office of alderman.

Meanwhile his son has entered the municipal service and become an articled pupil of the Town Clerk. After some years' service, he starts answering some of the advertisements appearing in the weekly local government newspapers, and eventually applies with success for the post of assistant to the clerk of a neighbouring county. There he gains new experience of local administration and a greater knowledge of administrative law; but the work is similar to that of a town clerk's department, and after a further period of service, he returns as Town Clerk of the city of his birth, where his father is now an alderman. He takes a prominent part in conferences of the Association of Municipal Corporations, to which he is sent officially by the council, sometimes in the company of his father. Since first entering municipal service he has been a member of the Institute of Public Administration, and at various times he has contributed articles to that Institute's monthly journal. On one or two occasions he has to give evidence before a Royal Commission which is investigating some problem of local government; and later he is himself a member of a similar Commission. He frequently has to visit London, when his council promotes a Bill in Parliament or when he thinks it expedient to visit some officer at the Ministry of Health; but he has no opportunity of comparing his own work with that of local government officials on the Continent or in America. His father had received an honour

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which few mayors receive ; and as a Town Clerk, the son is no less exceptional, for he, too, before retiring on his pension at the age of 65, receives a knighthood from the King. It only remains for his body to be buried a few years later, with that of his father, in the municipal cemetery.

So much for the imaginary municipal man and his equally fictitious son. In conclusion there are certain prophecies to be made concerning the future of local government in England.

(a) The services which can be developed most profitably by local authorities are town and country planning, and electricity. Neither of them need necessarily put the rate-payers to any great expense ; and both are of the first importance to Great Britain. The police, on the other hand, become daily a less suitable part of local government. Motor-cars alone have made the effective arrest of criminals almost impossible until the police are organized as a national service.¹ Nor would there be much loss of local autonomy, if a change were made ; for as it is, no elected member of a council has much freedom in the provision of this service. Housing, too, seems likely to decline rather than increase as a part of local government ; for though the smallest type of house will continue to be built by the councils, other types will probably be left to public utility companies and private enterprise.

(b) The areas of local government tend to grow larger. In the Irish Free State the rural district councils have already been abolished. In England since the 1929 Act the future of the smaller areas has become increasingly uncertain, and the impor-

¹ As it is, the central government co-operates with the local police in the detection of crime through the Criminal Investigation Department at Scotland Yard.

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tance of the counties and county boroughs proportionately assured ; and there are several good reasons why this tendency should continue. Both country planning and electrical development require large areas ; since de-rating narrowed the basis of assessment, the smaller areas have found their financial resources even less adequate than before ; and meanwhile the motor-car has enlarged the area which can conveniently be administered. Moreover, the larger the undertaking, the more possible does it become to have a specialized staff of officers, to attract men of outstanding ability (by attaching large salaries to one or two posts), and to improve the quality of the elected member by widening the field of choice.

Probably then in future more use will be made of federation as a means of securing the advantages of a wide area without the complete loss of local co-operation. Just as in Scotland the districts are administrative departments of the county, so the English county may prove to be the one area with financial responsibility, divided for various purposes into different groups of district-areas, and for other purposes grouped with neighbouring counties and county-boroughs. There seems, however, to be little chance in the near future that the county boundaries, except in one or two instances, will be substantially improved.

(c) There are three respects in which the technique of local government seems most likely to alter. In the first place committees, and perhaps councils too, will become smaller, and a more scientific division of labour will then be possible between the elected member and the official. Local authorities which find the areas of their jurisdiction enlarged will be forced to relieve

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their elected members of a great mass of detail which is not at present delegated to the permanent staff. The need of this will be particularly evident so long as economic conditions make the payment of elected members unlikely.

Secondly, some change in the recruitment and training of local government officials may follow. It will be made easier, perhaps, for university graduates to enter municipal service. The larger councils will find places for an increasing number of officers with administrative rather than merely technical qualification ; but there seems to be no immediate prospect either of a compulsory superannuation scheme or a national system of recruitment by open competition. Any change in this direction clearly depends on the enlargement of areas and the abolition of the smaller authorities.

Thirdly, although financial changes are impossible to foretell, the abolition of the percentage grants and their absorption in the general exchequer contribution are suggested, and there is general dissatisfaction with the present rating system. A local income tax, of the French or German kind, could be introduced : local authorities would then be saved the vast expense of valuation and could raise the greater part of their revenue by adding a certain number of pennies to the income tax which local inhabitants would already be paying. A tax might also be levied, as on the Continent and in the United States of America, on the owners of all property whose value was increased by the activities of the local council. It may also be suggested that without abolishing the present system a great improvement could be made if some kind of "weighting" could be applied to the principle of assessment: so, for

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instance, that an occupier who has a large family of young children, or is unemployed, or subject to some special disability, would be assessed less highly than a neighbour whose house is of the same rental value ; and also that an occupier whose income was large would be assessed more highly than the rental value of his house by itself would warrant.

(d) Further, it can safely be prophesied that the co-operation of voluntary enterprise in the field of local government will continue and increase. In the services of protection, the Automobile Association and the Royal Automobile Club have already become an indispensable part of the official organization for traffic control ; it is most unlikely that the voluntary fire brigades will be replaced in the near future by a state system ; and a further extension of voluntary effort is under discussion, for the purpose of watching the coasts and improving the life-boat service.

Certain of the welfare services, especially those which involve personal relations with the individual citizen, require the help of the unofficial worker if they are to be provided satisfactorily by the state. The success of such experiments as the Pioneer Health Centre at Peckham, in south-east London,¹ and the Day Workshop which the Workers' Educational Association recently organized in Lincoln, suggest that the extension of state activity does not make other social organizations either unnecessary or impossible. The increasing usefulness of after-care committees in connection with the schools is another indication of this tendency. There are signs, too, that the need of devices for co-ordinating the various organs of

¹ See Pearse and Scott Williamson, *The Case for Action*.

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social action in each place will soon be recognized more extensively. Rural Community Councils (each consisting of the representatives of as many of the local authorities and voluntary societies as possible) have already been set up in twenty counties¹; the number of village community councils is constantly increasing; and the National Council of Social Service attempts at the centre to co-ordinate the various local organizations.

(e) Finally, the future of local government in general depends on three conditions. First, the tastes and resources of the inhabitants must continue to vary from place to place: so long as there is inequality of income and the natural advantages of certain parts of the country count for anything, this condition seems likely to be fulfilled. Secondly, a sufficient number of people in each area must be prepared to work the political machine, either by voting or offering themselves for election: until the boundaries of certain local government areas are improved, and means are found of economizing the time and money of elected members, and unless the political apathy of the electorate begins to decrease, this second condition may at any time fail to be satisfied. And thirdly, Parliament must continue to believe that the national interests are furthered by the work of local authorities. Though the beliefs of future Parliaments are unpredictable, it seems likely that this third condition will be satisfied and local government will continue, so long at any rate as any service for which Parliament wishes to make provision has one or other of the following characteristics: if it does not need, as pensions

¹ Oxfordshire was the first to make this experiment, in 1920.

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or insurance benefits need, to be administered uniformly throughout the country; if, like education, it is of such a kind that the national state can co-operate with a local state in its provision, and so secure the minimum which national interests require; if, as in the case of libraries, it is quite useless unless those for whom it is intended take an intelligent interest in its provision; or finally if money is not available for the payment of professional administrators, and there is therefore no alternative to the use of the unpaid amateur.

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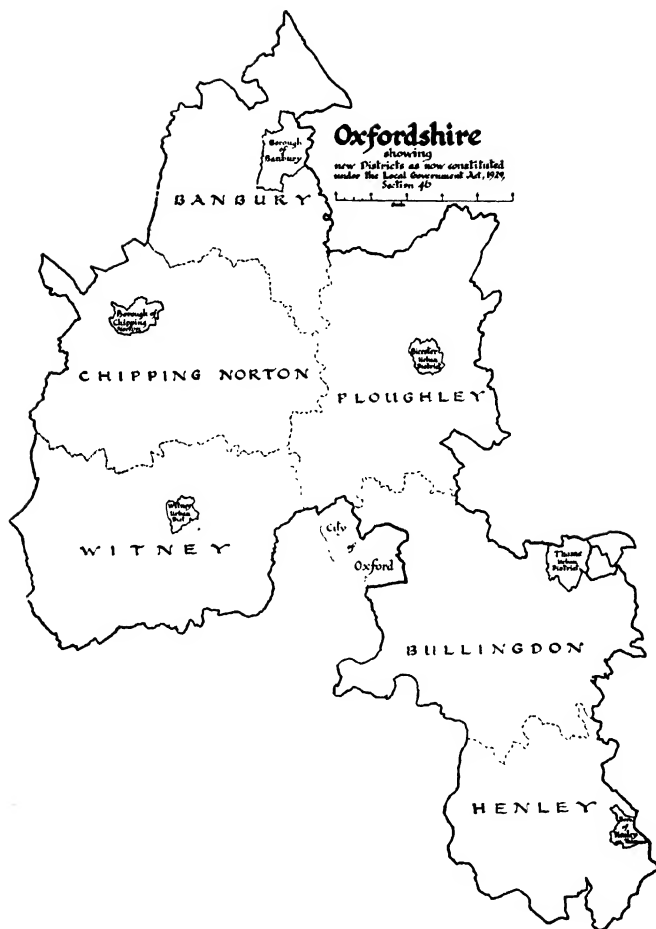


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